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MEMORANDUM OF AGREEMENT (MOA)
BETWEEN
THE LOS ANGELES GATEWAY REGION INTEGRATED REGIONAL
WATER MANAGEMENT JOINT POWERS AUTHORITY
AND
THE CITY OF LONG BEACH

FOR THE ADMINISTRATION AND COST SHARING RESULTING FROM
PREPARATION OF THE LOS CERRITOS CHANNEL METALS TOTAL
MAXIMUM DAILY LOAD IMPLEMENTATION PLAN, MONITORING PROGRAM,
AND SPECIAL STUDIES

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 Los Angeles Gateway Region Integrated Regional Water Management Joint Powers Authority ("Gateway Authority"), a California Joint Powers Authority, and the City of Long Beach, a California municipal corporation ("City"); hereinafter referred to as "Party" or "Parties":

RECITALS

WHEREAS, the mission of the Gateway Authority includes the equitable protection and management of water resources within its area; and

WHEREAS, portions of the Gateway Authority cities of Bellflower, Cerritos, Downey, Lakewood, Long Beach, Paramount, and Signal Hill, are located within the Los Cerritos Channel Watershed; and

WHEREAS, for the purposes of this Agreement, the term "Watershed Entities" shall include, to the extent that each enters into agreements substantially similar to this Agreement, the Gateway Authority cities of Bellflower, Cerritos, Downey, Lakewood, Long Beach, Paramount, and Signal Hill, as well as the California Department of Transportation ("Caltrans"), all of which manage or drain stormwater into at least a portion of the Los Cerritos Channel Watershed; and

WHEREAS, the United States Environmental Protection Agency ("USEPA") established the Los Cerritos Channel Metals Total Maximum Daily Load ("Metals TMDL") on March 17, 2010, with the intent of protecting and improving water quality in the Los Cerritos Channel Watershed; and

WHEREAS, this Metals TMDL will regulate certain discharges from NPDES Permit holders, requiring organization and cooperation among the regulated entities; and

WHEREAS, the Parties recognize that the proposed Metals TMDL is not self-enforcing, but could potentially become legally enforceable through incorporation into future National Pollutant Discharge Elimination System ("NPDES") Permits; and

WHEREAS, the Cities of Long Beach and Signal Hill funded technical assistance and studies on behalf of the Watershed Entities that resulted in technical modifications of the TMDL; and

WHEREAS, achieving the objectives of the Metals TMDL will be facilitated through preparation of an Implementation Plan ("IP"), a Monitoring Plan ("MP"), and specific Special Studies, by the Watershed Entities, to demonstrate compliance; and

WHEREAS, preparation of these plans and studies requires administrative and professional coordination services that the Gateway Authority can provide; and

WHEREAS, a Metals TMDL Technical Committee ("TC"), consisting of representatives of the Watershed Entities as well as stormwater experts, has been established to assist the Gateway Authority in coordinating the preparation and submission of the IP, MP, and any Special Studies to the California Regional Water Quality Control Board, Los Angeles Region on behalf of the Watershed Entities; and

WHEREAS, a Metals TMDL Steering Committee ("SC"), consisting of representatives of the Watershed Entities and other persons approved by the Watershed Entities, has been established for the purpose of overseeing administrative and fiscal coordination in support of achieving the Metals TMDL objectives; and

WHEREAS, the SC has determined that the approximately \$293,000 spent by the Cities of Long Beach (\$136,000) and Signal Hill (\$157,000) in TMDL Development costs, along with the costs of preparing the IP, MP, and potential Special Studies and other related costs incurred by the Gateway Authority in administering this Agreement, should be shared by the Watershed Entities based on the cost allocation formula contained in Exhibit A; and

WHEREAS, the Gateway Authority will endeavor to conclude substantially similar agreements with all of the Watershed Entities in order to minimize the cost to each Watershed Entity of complying with the Metals TMDL.

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 cooperatively support and undertake preparation of the IP, MP, and any Special Studies agreed to by the Parties.

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

Section 4. Voluntary Nature. The Parties voluntarily enter into this Agreement.

Section 5. Term. This Agreement shall remain and continue in effect until completion of the IP, MP, and any Special Studies agreed to by the Parties, or December 31, 2022, whichever occurs first.

Section 6. Role of the Gateway Authority.

- a) The Gateway Authority shall endeavor to enter into substantially and materially similar agreements with each of the Watershed Entities.
- b) Based on the directions of the TC, the Gateway Authority shall retain a Consultant or Consultants ("Consultant(s)") to prepare the IP, MP, and any agreed upon Special Studies to demonstrate compliance with the Metals TMDL. The Consultant's Scope of Work shall substantially conform to the Scope of Work set forth in Exhibit B to this Agreement.
- c) The Gateway Authority shall invoice the Watershed Entities a proportional amount to cover the costs incurred by the Gateway Authority in the performance of its duties under this Agreement. Such costs shall include, but not be limited to, the costs of: the Consultant's fees and costs for the preparation of the IP, MP, and Special Studies; Gateway Authority staff time; legal fees; audit expenses; and administering this Agreement (collectively, the "Agreement Costs"). The Gateway Authority shall invoice the Watershed Entities on an annual basis in an amount based on the Cost Share Formula in Exhibit A.

Section 7. Obligation to Pay Proportional Costs.

- a) Upon receiving an invoice, the City shall pay the Gateway Authority its proportionate share of the Gateway Authority's anticipated Agreement Costs in accordance with the Cost Share Formula set forth in Exhibit A.
- b) The Agreement shall become effective only if the Gateway Authority is able to execute substantially similar agreements with the cities of Bellflower, Lakewood and Long Beach. The City shall pay the adjusted proportional cost based on the Cost Share Formula set forth in Exhibit A. If the Gateway Authority is unable to execute materially similar agreements with any of the other Watershed Entities, the proportional costs set forth in Exhibit A shall be adjusted.
- c) Any over or underpayment of Agreement costs shall be credited or billed to the City during the following period or, if it occurs in the last year of this Agreement, it shall be returned upon termination of this Agreement.

Section 8. Invoicing and Payment.

- a) Payment to the Gateway Authority is due within sixty (60) days of the invoice date. The first invoice should be expected within sixty (60) days of signing this agreement. Invoices for future Agreement Costs will be billed annually in March, starting in the year 2011.
- ~~b) Any payment that is late shall be subject to interest from the due date. For any payment that is made from 1 to 30 days after the due date, the interest rate shall be equal to the Prime Rate in effect on the due date plus one (1) percent (e.g., if the Prime Rate is 5 percent, the interest rate for this Agreement will be 6 percent). For any payment made from 31 to 60 days after the due date, the interest rate shall be equal to the Prime Rate in effect on the due date plus five (5) percent. For payments made over 60 days after the due date, the interest rate shall be the Prime Rate in effect on the due date plus ten (10) percent. The rates shall, nevertheless, not exceed the maximum allowed by law.~~
- c) A Party will be delinquent if payment is not received within 120 days after first being invoiced by the Gateway Authority. The Gateway Authority will follow the procedure listed below, or such other procedure that the Steering Committee directs to effectuate payment: 1) verbally contact the official to whom notices should be addressed pursuant to Section 12 of this Agreement and 2) submit a formal letter from the Gateway Authority Executive Officer to the delinquent Watershed Entity. If payment is not received, the Gateway Authority may terminate the Agreement and recalculate the proportional cost for the remaining Watershed Entities.
- d) Any interest accrued on the funds collected per this Agreement shall be applied toward the Agreement Costs. The Gateway Authority shall annually submit a report to the SC on the amount of interest accrued by the Agreement account. Funds remaining at the end of the term of this Agreement shall be returned to the participating Watershed Entities in accordance with the Cost Share Formula in Exhibit A.



Section 9. Independent Contractor.

- a) The Gateway Authority is, and shall at all times remain, a wholly independent contractor for performance of the obligations described in this Agreement. The Gateway Authority's officers, officials, employees and agents shall at all times during the Term of this Agreement be under the exclusive control of the Gateway Authority. The Watershed Entities shall not control the conduct of the Gateway Authority or any of its officers, officials, employees or agents, except as set forth in this Agreement. The Gateway Authority, and its officers, officials, employees, and agents shall not be deemed to be employees of the Watershed Entities.

- b) The Gateway Authority is solely responsible for the payment of salaries, wages, other compensation, employment taxes, worker's compensation, or similar taxes for its employees performing services hereunder.

Section 10. Indemnification and Insurance.

- a) The Gateway Authority shall include an indemnification provision in the agreement with the Consultant requiring the Consultant to defend, indemnify and hold harmless the City and the Gateway Authority, 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 Gateway Authority or the City) resulting from negligent or intentional acts, errors and omissions committed by Consultant, its officers, employees, and other representatives and agents, arising out of or related to Consultant's performance under this Agreement.
- b) The City shall defend, indemnify and hold harmless the Gateway Authority, its officers, employees, and other representatives and agents of the Gateway Authority, 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 Gateway Authority) and for negligent or intentional acts, errors and omissions committed by City, its officers, employees, and other representatives and agents, arising out of or related to City's performance under this Agreement, except for such loss as may be caused by Gateway Authority's gross negligence or intentional acts or the gross negligence or intentional acts of its officers, employees, or other representatives and agents.
- c) Consultant's Insurance. The Gateway Authority shall require the Consultant to provide proof of current Automotive and/or General Liability, Professional (Errors and Omissions) in sufficient coverage amounts, naming the Gateway Authority and each Watershed Entity as an additional insured. Consultant shall also be required to provide proof of current Workman's Compensation insurance, when applicable.

Section 11. Termination of Agreement. Either Party may terminate this Agreement in whole or in part, for any reason, or no reason, by giving the other Party thirty (30) days written notice thereof. The City shall be responsible for Agreement Costs to which the Gateway Authority became bound prior to the date of termination. Such Agreement Costs shall include the remaining fees of any Consultant retained by the Gateway Authority prior to the date of termination. Gateway Authority shall notify in writing all Watershed Entities within fourteen (14) days after receiving written notice from any Watershed Entity that said entity intends to terminate this Agreement. Each

Watershed City's proportionate cost allocation shall be reapportioned thereafter in accordance with the Cost Share Formula in Exhibit A.

Section 12. 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 Gateway Authority: Ms. Annette Hubbell
Gateway Authority Executive Officer
City of Downey
11111 Brookshire Ave.
Downey, CA 90241

To City of Long Beach: Patrick H. West
City Manager
333 W. Ocean Blvd.
Long Beach, CA 90802

- b) Separate Accounting and Auditing. The Gateway Authority agrees to establish a separate account to track revenues and expenses resulting from the Agreement. Annual financial statements and audits will be made available to the participating Parties, after review and approval by the Metals TMDL SC.
- c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of each Party to this Agreement and its respective heirs, administrators, representatives and successors.
- d) Amendment. The terms and provisions of this Agreement may not be amended, modified or waived, except by a written instrument signed by both Parties.
- e) Waiver. Waiver by either Party 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, or a waiver of any subsequent breach 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 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) 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 construed without the invalid, void, or unenforceable provision(s).
- i) 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.
- 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.
- l) 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: 11.9.10


CITY OF LONG BEACH

Assistant City Manager

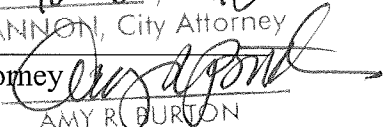

City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

ATTEST:


City Clerk

APPROVED AS TO FORM:

10-18, 2010
ROBERT E. SHANNON, City Attorney
By 
AMY R. BURTON
DEPUTY CITY ATTORNEY

DATE: _____

LOS ANGELES GATEWAY REGION
INTEGRATED REGIONAL WATER
MANAGEMENT JOINT POWERS AUTHORITY


Gateway Authority Chair

ATTEST:


Gateway Authority Secretary

APPROVED AS TO FORM:

Gateway Authority General Counsel

EXHIBIT A

**LOS CERRITOS CHANNEL METALS TMDL
COST ALLOCATION**

| Agency Name | Acres in Watershed ¹ | Percent of Watershed Area | Agency Cost Share per \$100,000 | | Total |
|---------------------|---------------------------------|---------------------------|---------------------------------|------------|-----------|
| | | | Flat Fee | Area Share | |
| Bellflower | 2,818.43 | 16.00% | \$5,000 | \$9,599 | \$14,599 |
| CalTrans | 497.74 | 2.83% | \$5,000 | \$1,695 | \$6,695 |
| Cerritos | 57.60 | 0.33% | \$5,000 | \$196 | \$5,196 |
| Downey | 245.00 | 1.39% | \$5,000 | \$834 | \$5,834 |
| Lakewood | 4,802.77 | 27.26% | \$5,000 | \$16,358 | \$21,358 |
| Long Beach | 7,535.38 | 42.77% | \$5,000 | \$25,665 | \$30,665 |
| Paramount | 1,128.93 | 6.41% | \$5,000 | \$3,845 | \$8,845 |
| Signal Hill | 530.75 | 3.01% | \$5,000 | \$1,808 | \$6,808 |
| JPA MOA Total | 17,616.60 | 100.00% | \$40,000 | \$60,000 | \$100,000 |
| UNI Los Angeles Co. | 94.40 | | | | |
| USEPA TMDL Total | 17,711.00 | | | | |

¹ CalTrans provided acreage values were subtracted from city acreage provided by USEPA.

The City of Long Beach and Signal Hill's annual payments as shown above shall be offset by the credits outlined in the Recitals of the Agreement.

EXHIBIT B

SCOPE OF WORK FOR DEVELOPMENT OF AN IMPLEMENTATION PLAN FOR AN EPA- ESTABLISHED METALS TMDL FOR THE LOS CERRITOS CHANNEL FRESHWATER WATERSHED

1. Prepare a detailed outline for Metals TMDL Implementation component to accompany the incorporation of the Metals TMDL in the reissued MS4 NPDES Permits, an Implementation Plan for the Los Cerritos Channel Metals TMDL
2. Prepare an Implementation Strategy, including
 - a. An adaptive management approach,
 - b. Tiered source control measures, and
 - c. Tiered treatment control, if necessary
3. Prepare recommended Implementation Actions for
 - a. Municipal Stormwater Permittees
 - b. Caltrans
 - c. Construction Stormwater Permittees
 - d. Industrial Stormwater Permittees
4. Draft and Negotiate an Implementation Schedule acceptable to
 - a. Municipal permittees
 - b. The Los Angeles Regional Water Quality Control Board
 - c. USEPA Region IX
5. Coordinate with Monitoring Consultant on Establishment of
 - a. Ambient Monitoring Program
 - b. TMDL Effectiveness Monitoring
 - c. Special Studies, if any
6. Coordinate with Technical Committee and Steering Committee
 - a. Attend meetings, as requested
 - b. Submit draft materials to Technical Committee for review and approval
 - c. Submit draft final materials to Steering Committee for review and approval before submittal to Regional Water Board
7. Coordinate with Regional Water Board staff
 - a. Obtain an outline format for a Basin Plan Amendment
 - b. Review Implementation Strategy with Regional Water Board staff
 - c. Review Implementation Actions with Regional Water Board staff

Note: The Technical Committee may modify details of Scope of Work, if necessary.

LOS CERRITOS CHANNEL TMDL AMBIENT MONITORING

OVERVIEW

Ambient monitoring will establish baseline conditions for three major segments of the watershed and provide the necessary groundwork for effectiveness monitoring. The basic monitoring design used in the ambient monitoring effort will be the backbone of the effectiveness monitoring program.

OUTLINE OF MONITORING PROGRAM

Ambient Monitoring Program –Wet Season

Wet season monitoring is intended to provide measurement of trace metal concentrations and loads at the three sites representing each of three major segments of the Los Cerritos Channel storm drain. The following subtasks will be required for the first year of the program. The first two tasks will apply only to the first year.

1. Identify three additional monitoring sites
2. Purchase and install equipment to obtain automated flow-composite samples.
3. Continue monitoring at the City of Long Beach Stearns Street monitoring site.
4. Monitoring at all sites will include:
 - Continuous measurement of flow and rainfall
 - Collection of flow-rated composite samples for six (6) storm events
 - Analyses will include total hardness, TSS and trace metals. Trace metals will include dissolved and total fractions of copper, lead and zinc.

Ambient Monitoring Program –Dry Season

Dry weather flows will need to be monitored continuously throughout the summer dry season (May through September) and sampled to determine metals concentrations and loads. Alternative flow measurement techniques will be necessary during the summer dry season to provide continuous measurement of dry weather flow and more accurate baseline measurements of concentration and loads. Monitoring will be conducted at the same locations used for monitoring storm flows during the winter wet season. Subtasks for the dry weather ambient monitoring effort will include the following:

1. Determine flume sizes. Purchase the flumes, sidewalls (stop logs) for consolidating shallow flows, data loggers and high-precision pressure sensors for each site.
2. Install temporary flumes and electronic packages at the three TMDL monitoring sites and the Long Beach Mass Emission monitoring site during the summer.
3. Provide continuous measurements of summer dry weather flow at each site.
4. Collect grab samples for hardness, TSS and trace metals 4 times during the summer dry weather period and 2 times during winter dry weather period.

Reporting

Annual draft and final report will be submitted after the first full year of monitoring. The dates for submission of these reports will be established once the program is initiated.

* Notes: Details of scope may be modified by Technical Committee, if necessary.



RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101
Telephone 213.626.8484 Facsimile 213.626.0078

ATTORNEY-CLIENT PRIVILEGE

March 18, 2011

VIA U.S. MAIL

Ms. Annette Hubbell
Executive Director
Los Angeles Gateway Region Integrated Regional Water Management
Joint Powers Authority
1111 Brookshire Avenue
Downey, California 90241

Re: Los Angeles River Catch Basin Retrofit Project Memorandum of Agreement

Dear Annette:

This letter will confirm our recent discussions about the above-referenced agreements Shannon sent me to sign. As we discussed, I am unable to sign the agreements because I am concerned that paragraph c of Section 10 leaves the Gateway Authority open to potential liability.

This concern arises from the following language in that section:

“The Gateway Authority will require the Consultant to provide proof of current Automotive and/or General Liability, Professional (Errors and Omissions) in sufficient coverage amounts...”

This clause is vague and ambiguous and leaves the Gateway Authority open to a claim from a signatory City that the level of insurance the Gateway Authority required of the Consultant was insufficient. I realize that this potential might be slight, but I cannot sign an agreement containing such a significant ambiguity. I am surprised that the attorneys for the signatory cities did not raise a question about this clause. Perhaps they did, and the City decided to sign the agreement in any event or the City Attorney realized that the risk lies with the Gateway authority not the City.

Although an amendment is necessary to fully protect the Gateway Authority, I realize that having each city approve an amendment is not practical. Some lesser protection can be obtained by developing appropriate insurance coverage amounts and types and having each city’s Administrative Entity member agree that the coverage is sufficient.

- RICHARD RICHARDS
(1916-1988)
- GLENN R. WATSON
(1917-2010)
- HARRY L. GERSON
(1922-2007)
- STEVEN L. DORSEY
- WILLIAM L. STRAUZ
- MITCHELL E. ABBOTT
- GREGORY W. STEPANICICH
- ROCHELLE BROWNE
- QUINN M. BARROW
- CAROL W. LYNCH
- GREGORY M. KUNERT
- THOMAS M. JIMBO
- ROBERT C. CECCON
- STEVEN H. KAUFMANN
- KEVIN G. ENNIS
- ROBIN D. HARRIS
- MICHAEL ESTRADA
- LAURENCE S. WIENER
- STEVEN R. ORR
- B. TILDEN KIM
- SASKIA T. ASAMURA
- KAYSER O. SUME
- PETER M. THORSON
- JAMES L. MARKMAN
- CRAIG A. STEELE
- T. PETER PIERCE
- TERENCE R. BOGA
- LISA BOND
- JANET E. COLESON
- ROXANNE M. DIAZ
- JIM G. GRAYSON
- ROY A. CLARKE
- WILLIAM P. CURLEY III
- MICHAEL F. YOSHIBA
- REGINA N. DANNER
- PAULA GUTIERREZ BAEZA
- BRUCE W. GALLOWAY
- DIANA K. CHUANG
- PATRICK K. BOBKO
- NORMAN A. DUPONT
- DAVID M. SNOW
- LOLLY A. ENRIQUEZ
- KIRSTEN R. BOWMAN
- GINETTA L. GIOVINCO
- TRISHA ORTIZ
- CANDICE V. LEE
- BILLY D. DUNSMORE
- AMY GREYSON
- DEBORAH R. HAKMAN
- D. CRAIG FOX
- SUSAN E. RUSNAK
- G. INDER KHALSA
- DAVID G. ALDERSON
- MARICELA E. MARROQUÍN
- GENA M. STINNETT
- JENNIFER PETRUSIS
- STEVEN L. FLOWER
- CHRISTOPHER J. DIAZ
- ERIN L. POWERS
- TOUSSAINT S. BAILEY
- SERITA R. YOUNG
- VERONICA S. GUNDERSON
- SHIRI KLIMA
- DIANA H. VARAT
- KATRINA C. GONZALES
- CHRISTOPHER L. HENDRICKS
- JULIE A. HAMILL
- ANDREW J. BRADY

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SAN FRANCISCO OFFICE
TELEPHONE 415.421.8484

ORANGE COUNTY OFFICE
TELEPHONE 714.990.0901

ATTORNEY-CLIENT PRIVILEGE

Ms. Annette Hubbell
March 18, 2011
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You also asked how the Gateway Authority should respond to Long Beach's deletion of the requirement to pay interest on late payments. Since each agreement is between an individual city and the Gateway Authority, it not legally necessary that each agreement be consistent. Thus, the other agreements do not need to be amended, and how to resolve the discrepancy between agreements is a policy, not legal, issue. I imagine that the Gateway Authority will merely waive the interest clause for the other cities.

I am returning with this letter the original agreements Shannon had sent for my signature.

Very truly yours,



Steven L. Dorsey
Agency Counsel

Enclosures

cc: Shannon DeLong

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