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MEMORANDUM OF UNDERSTANDING
FOR FUNDING AND CONSTRUCTION OF THE
LOS CERRITOS CHANNEL SUB-BASIN 4 STORMWATER CAPTURE FACILITY

This Memorandum of Understanding (MOU) is made and entered into by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter referred to as DISTRICT), the CITY OF SIGNAL HILL, a municipal corporation, (hereinafter referred to as SIGNAL HILL), and the CITY OF LONG BEACH, a municipal corporation (hereinafter referred to as LONG BEACH). SIGNAL HILL and LONG BEACH are collectively referred to as CITIES; and DISTRICT, SIGNAL HILL and LONG BEACH are collectively referred to as PARTIES or individually as PARTY.

WITNESSETH

WHEREAS, the PARTIES are members of the Los Cerritos Channel Watershed Group, which elected to pursue the Watershed Management Program (WMP) approach to comply with the requirements of the Municipal Separate Storm Sewer System (MS4) Permit; and

WHEREAS, the Los Cerritos Channel Watershed Group's WMP was approved by the Los Angeles Regional Water Quality Control Board (REGIONAL BOARD) in August 2015; and

WHEREAS, the CITIES have begun construction of the Los Cerritos Channel Sub-Basin 4 Stormwater Capture Facility at Long Beach Airport (hereinafter referred to as PROJECT); and

WHEREAS, the PROJECT is located in Los Cerritos Channel Watershed and is identified in the REGIONAL BOARD approved WMP for that watershed as a priority regional project; and

WHEREAS, the DISTRICT owns and operates a storm drain known as Project 181-9, Los Cerritos Unit 3 Line D, which serves as the main drainage facility for the Los Cerritos Channel Sub-Basin 4 Watershed; and

WHEREAS, the primary purpose of the PROJECT is to improve water quality in Los Cerritos Channel receiving water by diverting stormwater and dry weather urban runoff from Project 181-9, Los Cerritos Unit 3 Line D into an underground infiltration gallery located within Long Beach Airport as shown in the attached Exhibit A; and

WHEREAS, the PROJECT provides additional benefits, including local groundwater recharge and reducing downstream channel maintenance costs; and

WHEREAS, the stormwater and urban runoff that will be captured by the PROJECT originates from 1,925 acres of land area within the jurisdiction of the CITIES, as depicted in Exhibit B; and

WHEREAS, the PROJECT is designed to capture the eighty-fifth (85th) percentile, twenty-four (24) hour storm event runoff, with an estimated total volume of one hundred and thirty-four (134) acre-feet; and

WHEREAS, the PROJECT will be constructed in several phases over the coming years based upon available funding, with the initial phases, as depicted in Exhibit A, (INITIAL PROJECT PHASES) having a combined design capacity of approximately thirty-three (33) acre-feet; and

WHEREAS, the total cost of the INITIAL PROJECT PHASES is estimated to be Twenty-Two Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$22,750,000); and

WHEREAS, SIGNAL HILL has received Eleven Million and 00/100 Dollars (\$11,000,000) in funding for the PROJECT from the California Department of Transportation (hereinafter referred to as CALTRANS) through a Cooperative Implementation Agreement signed on June 29, 2015, as depicted in Exhibit C; and

WHEREAS, SIGNAL HILL will receive an additional Four Million Two Hundred Fifty Thousand and 00/100 Dollars (\$4,250,000) from CALTRANS through a second Cooperative Implementation Agreement signed on May 22, 2018, as depicted in Exhibit D; and

WHEREAS, the DISTRICT also desires to participate in the PROJECT and contribute the amount of Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000) toward the construction costs of the INITIAL PROJECT PHASES; and

WHEREAS, the CITIES propose to fund the remaining cost of the PROJECT, subject to the availability of funds, including additional grant funds; and

WHEREAS, on April 1, 2016, the CITIES entered into a Cooperative Agreement to define their respective roles and responsibilities regarding the implementation, funding, and maintenance of the PROJECT, as shown in Exhibit E; and

WHEREAS, the CITIES anticipate amending said April 1, 2016, Cooperative Agreement to adjust their respective roles and responsibilities in October 2018; and

WHEREAS, SIGNAL HILL has prepared an Initial Study and adopted a Mitigated Negative Declaration on June 14, 2016, for the PROJECT, attached as Exhibit F; and

WHEREAS, SIGNAL HILL has applied for and obtained a permit from the DISTRICT for modifications to Project 181-9, Los Cerritos Unit 3 Line D caused by the diversion structure associated with the PROJECT (DIVERSION STRUCTURE); and

WHEREAS, the CITIES intend to enter into a separate long-term Operation and Maintenance Agreement in regards to the DIVERSION STRUCTURE and the INITIAL PROJECT PHASES; and

WHEREAS, the PROJECT is in the joint interest of the PARTIES and will improve water quality, provide opportunities to enhance water conservation, and reduce channel maintenance costs; and

WHEREAS, the PARTIES desire to enter into this MOU to establish each PARTY's responsibilities and financial obligations for the design and construction of the PROJECT.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, PARTIES hereby agree as follows:

(1) SIGNAL HILL AGREES:

- a. To invoice DISTRICT for the amount of Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000) (DISTRICT CONTRIBUTION) only after the satisfaction of the condition in Section 2(a)(i), below.
- b. To use the DISTRICT CONTRIBUTION solely for construction-related costs of the INITIAL PROJECT PHASES, including but not limited to costs for project administration and project site restoration (CONSTRUCTION-RELATED COSTS).

(2) DISTRICT AGREES:

- a. To pay the DISTRICT CONTRIBUTION to SIGNAL HILL within forty-five (45) days of receiving an invoice from SIGNAL HILL for the same, provided that the following condition has occurred:
 - i. CITIES have fully executed an amendment to the April 1, 2016, Cooperative Agreement to account for the INITIAL PROJECT PHASES, as described in the recitals.

(3) LONG BEACH AGREES:

- a. To acquire property and all necessary rights of way for the PROJECT.

(4) CITIES AGREE:

- a. To prepare plans, specifications, and a cost estimate for the INITIAL PROJECT PHASES and provide complete copies to the DISTRICT.
- b. To obtain and comply with all applicable regulatory permits, approvals, and requirements for construction of the INITIAL PROJECT PHASES.
- c. To provide for the construction of the INITIAL PROJECT PHASES in accordance with the approved plans and specifications and administer the construction contract.

- d. That the DISTRICT CONTRIBUTION shall be used solely for the CONSTRUCTION-RELATED COSTS.
 - e. To notify DISTRICT within ten (10) business days of the CITIES' acceptance of the completed INITIAL PROJECT PHASES.
 - f. Upon completion of construction of INITIAL PROJECT PHASES, to provide as-built plans to DISTRICT.
 - g. To enter into an agreement describing each CITY's responsibilities for the ongoing maintenance and operation of the INITIAL PROJECT PHASES once they are completed (OPERATIONS and MAINTENANCE AGREEMENT); provided that such agreement shall be negotiated by the CITIES in good faith.
- (5) TERM AND TERMINATION:
- a. This MOU shall become effective on the date of execution by the third PARTY to sign (EFFECTIVE DATE). Unless earlier terminated in accordance with Section 5(b), this MOU shall remain in effect until all of the following have occurred:
 - i. SIGNAL HILL has received full payment of the DISTRICT CONTRIBUTION from DISTRICT;
 - ii. CITIES have notified DISTRICT that they have accepted the completed INITIAL PROJECT PHASES;
 - iii. CITIES have provided DISTRICT with complete as-built plans for the INITIAL PROJECT PHASES; and
 - iv. CITIES have entered into an OPERATIONS and MAINTENANCE AGREEMENT.
 - b. Notwithstanding any other provision of this MOU, if construction of the last Phase of the INITIAL PROJECT PHASES as depicted in Exhibit A (shown in yellow) has not commenced within one (1) year from the EFFECTIVE DATE of this MOU, the DISTRICT may, in its sole discretion, terminate this MOU by providing sixty (60) days' written notice thereof to CITIES, provided construction of said last Phase has not commenced by the last day of the notice period; however, if construction of the last phase of the INITIAL PROJECT PHASES has not commenced within one (1) year from the EFFECTIVE DATE of this MOU and the PARTIES mutually agree that the delay is due to unforeseen circumstances, the DISTRICT shall not exercise its option to terminate this MOU. If the DISTRICT exercises its option to terminate this MOU pursuant to this provision, CITIES shall return the DISTRICT CONTRIBUTION (if previously received) in full to the DISTRICT

within sixty (60) days of the effective date of the termination, without any additional penalties or interest.

(6) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. PARTIES shall have no financial obligation to any other PARTY under this MOU except as herein expressly provided.
- b. Indemnification. In contemplation 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 by Section 895 of said Code, each of the PARTIES hereto, as among themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it, or any of its officers, agents, or employees by law for injury caused by a negligent or wrongful 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 and holds harmless the other PARTIES for any loss, cost, or expense that may be imposed upon such other PARTY solely by virtue of said Section 895.2. PARTIES to this MOU agree to indemnify, defend, and hold harmless each other against any and all liability, expense, and claims arising from their respective negligent or wrongful acts and omissions. The provisions of Section 2778 of the California Civil Code are made a part hereof as if fully set forth herein. The provisions of the Section shall survive the termination of this MOU.
- c. Extra Costs. Should the actual CONSTRUCTION-RELATED COSTS incurred for the INITIAL PROJECT PHASES exceed the amount of the budget (\$22,750,000) (BUDGET), CITIES may, in their discretion, do either of the following:
 - i. Make additional contributions as necessary to complete the INITIAL PROJECT PHASES; or
 - ii. Redesign and modify the plans and specifications of the INITIAL PROJECT PHASES as necessary to keep the PROJECT within the BUDGET, including abandoning elements of the PROJECT as necessary; provided, however, that if the capacity of the INITIAL PROJECT PHASES is reduced by more than ten (10) percent of the estimated thirty-three (33) acre-feet, the CITIES shall consult with the DISTRICT. Based on the outcome of this consultation, the DISTRICT may reduce its contribution on a pro-rata basis, by Two Hundred Twenty-seven Thousand Two Hundred and 72/100 Dollars (\$227,272) for each acre-foot or portion thereof by which the capacity is reduced below twenty-nine (29) acre-feet.

- d. Cooperation. The PARTIES shall fully cooperate with one another to attain the purposes of this MOU.
- e. Good Faith. Each PARTY shall use reasonable efforts and work in good faith for the expeditious completion of the purposes and goals of this MOU and the satisfactory performance of its terms.
- f. Voluntary. This MOU is voluntarily entered into to attain the purposes set forth in this MOU.
- g. Relationship of Parties. The PARTIES are and shall remain at all times 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 another 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.
- h. Binding Effect. 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 prior written consent of the other PARTIES.
- i. Amendment. The terms and provisions of this MOU may not be amended, modified, or waived, except by an instrument in writing signed by all the PARTIES.
- j. Waiver. Waiver by any PARTY to this MOU of any term, condition, or covenant of this MOU shall not constitute a waiver of any other term, condition, or covenant. Waiver by any PARTY to any breach of the provisions of this MOU shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this MOU.
- k. Governing Law. This MOU is made under and will be governed by the laws of the State of California. In the event of litigation between the PARTIES, venue in the State trial court shall lie exclusively in the County of Los Angeles.
- l. No Presumption in Drafting. All PARTIES have been represented by legal 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.
- m. Entire Agreement. This MOU 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.

- n. Severability. The provisions of this MOU are severable, and the invalidity, illegality, or unenforceability of any provision of this MOU will not affect the validity or enforceability of any other provisions. If any provision of this MOU is found to be invalid, illegal, or unenforceable, the PARTIES shall endeavor to modify that clause in a manner, which gives effect to the intent of the PARTIES entering into this MOU.
- o. Counterparts. This MOU may be executed in counterparts, which together shall constitute the same and entire MOU.
- p. Notices. 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 Representative of the PARTY at the address set forth below. PARTIES shall promptly notify each other of any change of contact information, including personnel changes. Written notice shall include notice delivered via e-mail or fax. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by e-mail; or (b) on the third business day following mailing by registered or certified mail (return receipt requested) to the address set forth below.
- q. Administration. For purposes of this MOU, the PARTIES hereby designate as their respective PARTY Representatives the persons named below. The designated PARTY Representatives, or their respective designees, shall administer the terms and conditions of the MOU on behalf of their respective PARTY. Each of the persons signing below on behalf of a PARTY represents and warrants that they are authorized to sign this MOU on behalf of such PARTY.

SIGNAL HILL: Ms. Kelli Tunnicliff
Director of Public Works
City of Signal Hill
2175 Cherry Avenue
Signal Hill, CA 90755-3799

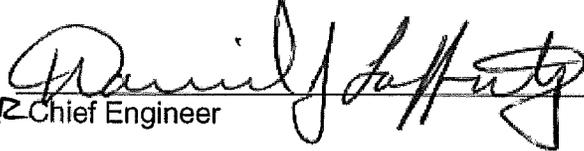
LONG BEACH: Mr. Craig Beck
Director of Public Works
City of Long Beach
333 West Ocean Boulevard
Long Beach, CA 90802

DISTRICT: Mr. Paul Alva
Assistant Deputy Director
Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91803-1331

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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:

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By 
FDR Chief Engineer

11/7/18
Date

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By 
Deputy

11-1-18
Date

CITY OF SIGNAL HILL

By 

Oct 12, 2018
Date

Title CITY MANAGER

APPROVED AS TO FORM:

CITY ATTORNEY

By 

Title DANNY ALESHIRE FOR DAVID ALESHIRE

CITY OF LONG BEACH

By 

Oct 26, 2018
Date

Title Tom Modica
Assistant City Manager

EXECUTED PURSUANT TO SECTION 301 OF
THE CITY CHARTER

CITY ATTORNEY

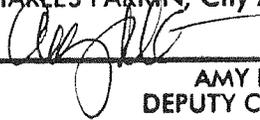
By _____

Title _____

APPROVED AS TO FORM

10-22, 2018

CHARLES PARKIN, City Attorney

By 
AMY R. WEBBER
DEPUTY CITY ATTORNEY