

**DISSOLUTION OF MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF HERMOSA BEACH, THE CITY OF MANHATTAN BEACH, THE CITY OF REDONDO
BEACH, THE CITY OF TORRANCE, AND THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
RELATED TO DESIGN OF JOINT REGIONAL PROJECTS WITHIN THE SMB 6-01 ANALYSIS REGION
OF THE ENHANCED WATERSHED MANAGEMENT PROGRAM (EWMP)
FOR THE BEACH CITIES WATERSHED MANAGEMENT GROUP**

This document memorializes the dissolution of the MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF HERMOSA BEACH, THE CITY OF MANHATTAN BEACH, THE CITY OF REDONDO BEACH, THE CITY OF TORRANCE, AND THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT FOR IMPLEMENTATION OF JOINT REGIONAL PROJECTS WITHIN THE SMB 6-01 ANALYSIS REGION OF THE ENHANCED WATERSHED MANAGEMENT PROGRAM (“EWMP”) FOR THE BEACH CITIES WATERSHED MANAGEMENT GROUP dated on or about September 26, 2017. Collectively, these entities shall be known herein as “PARTIES” or individually as “PARTY”.

RECITALS

A. In 2013 the Parties each individually approved a Memorandum of Understanding (“MOU”) to develop an Enhanced Watershed Management Plan to be submitted for approval by the Los Angeles Regional Water Quality Control Board (“Regional Board”) in compliance with the Municipal Separate Storm Sewer System (“MS4”) permit. On or around September 26, 2017, the Parties entered into a separate MOU to (1) establish proportional responsibility for three regional structural projects identified in the Enhanced Watershed Management Program for the Beach Cities Watershed Management Group (“EWMP”), and (2) establish the Parties’ obligations regarding the design and construction of the first regional structural project, identified in the EWMP as the Greenbelt Infiltration Project (“GIP”), located primarily within the Veteran’s Park Trail greenbelt area in the City of Hermosa Beach. The MOU listed Hermosa Beach as the Lead Agency for the project. The MOU is attached as Exhibit A to this Agreement for reference.

B. The EWMP identifies the GIP as one of several high-priority structural projects to address runoff into Santa Monica Bay. The purpose of the GIP was to divert storm water and urban runoff from a County storm drain beneath Herondo Street (the “Herondo Storm Drain”), provide pre-treatment for gross pollutants and direct diverted flow to an infiltration basin to remove 100% of the pollutant load within the diverted volume, thereby reducing pollutant discharges into Santa Monica Bay. This and other regional projects were identified through a complex modeling process that identifies which combination of projects in the watershed could achieve the water quality limits set forth in the MS4 permit issued by the Regional Board. The EWMP identifies an alternative location to the Veteran’s Park Trail site located on an SCE transmission easement, which is neither owned nor controlled by any of the agencies party to

the EWMP. Both sites were believed to provide the assurances of compliance with the permit requirements, assuming property owners of each site would allow installation of the project.

2. The Cost distribution for the GIP design phase was set out in the MOU based on each party's proportionate runoff contribution to the Herondo Storm Drain, as follows:

PARTY	Percent Responsibility as shown in Table A-1 of the MOU	Distributed Cost by Agency
City of Hermosa Beach	13.6%	\$115,550.50
City of Manhattan Beach	2.5%	\$21,240.90
City of Redondo Beach	50.8%	\$431,615.05
City of Torrance	33.1%	\$281,229.50
Total Design Phase Cost Distributed among PARTIES	100%	\$849,635.95

C. The Cities of Manhattan Beach, Redondo Beach and Torrance deposited the above referenced amounts with the City of Hermosa Beach to cover the anticipated costs of the design stage of the GIP. The County of Los Angeles would only be obligated to contribute to the construction costs for the project, which have yet to be determined.

D. Following adoption of the MOU, and with the Parties' approval, the City of Hermosa Beach hired a consultant to begin the preliminary design work for the GIP located at the Veteran's Trail Park site.

E. As of March 2019, \$233,923.95 had been expended by Hermosa Beach on design services. The proportional share of this expense is distributed as follows:

City	Cost-share Portion (%)	Total Expenditures
Redondo Beach	50.8	\$118,833.37
Torrance	33.1	\$77,428.83
Hermosa Beach	13.6	\$31,813.66
Manhattan Beach	2.5	\$5,848.09
Total		\$233,923.95

F. Following the Regional Board's approval of the EWMP in 2016, the City of Hermosa Beach, in partnership with the rest of the Parties, submitted a successful application to the State Board for funding the design and construction of the GIP. The Proposition 1 Stormwater Implementation Grant (Prop 1 Grant) amount of \$3,099,400 represented approximately one half of the estimated Project cost. The balance of the Project cost was to be provided as local matching funds by the members of the Beach Cities Watershed Management Group (WMG).

G. Between the periods of approximately March 2018 and June 2019 as the conceptual design of the GIP became better understood, Hermosa Beach residents expressed concern with the size and location of the GIP. The residents expressed concerns such as noise, odor, toxic buildup, liquefaction, vector control and adjacent structure vulnerability, as well as the inequities of siting the largest EWMP project in Hermosa Beach (with 13.6% of contribution for this project). Some residents threatened legal challenges to the CEQA review of the project and other opposition that would further delay the project. Despite staff and advisory consultants addressing these technical concerns and reminding the residents of the cooperative nature and purpose of the EWMP's proposed regional projects, opposition to the GIP remained.

H. On March 26, 2019, the Hermosa Beach City Council determined that it would not site a project of the size of the GIP in Hermosa Beach. The Hermosa Beach City Council provided direction to its staff to investigate the feasibility of siting a similar infiltration project at a new location within North Francisca Avenue in Redondo Beach. The Hermosa Beach City Council also acknowledged the complexities of managing stormwater and that even if the North Francisca site is viable, the Parties' EWMP obligations may still require identifying a site for a smaller project in Hermosa. The Hermosa Beach City Council expressed its willingness to site a smaller project in the City of Hermosa Beach that is more commensurate with its contribution to the stormwater discharged at the Herondo Storm Drain. The Hermosa Beach City Council also requested that the Parties dissolve or amend the existing cost-sharing MOU (which currently identifies Hermosa Beach as Lead Agency and covers the parties' obligations through the design phase of the GIP).

I. Notwithstanding efforts to maintain the grant award and identify an alternate project site, the State Water Resources Control Board withdrew the grant award due to a lack of project readiness.

J. Over recent months, the Parties have exchanged numerous written correspondence, in which the cities of Redondo Beach and Torrance have expressed frustration with Hermosa Beach's decision to stop the project and the resulting loss of the grant funds and have threatened legal action.

K. The Parties, through their staff and legal representation, have met to discuss possible solutions to identify an alternate project site or sites and to continue working together in good

faith and as neighbors to implement the obligations and responsibilities set forth in the EWMP and to resolve this dispute.

L. LA County Flood Control District (LAFCD) was not a party to the MOU for cost sharing of the project design. LAFCD was to be added to a future amendment to the MOU to contribute to the constructions costs for the Project. The parties anticipate the same degree of participation from LAFCD for any future project.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the PARTIES, and of the promises contained in this Dissolution of MOU, the PARTIES agree as follows:

Section 1. Recitals. The recitals set forth above are incorporated into this Dissolution of MOU.

Section 2. Purpose. The purpose of this Dissolution of MOU is to wind down the obligations set forth in the September 26, 2017 cost sharing MOU and to memorialize an understanding of the Parties' intent to consider implementing a new a joint regional structural project(s) within the SMB 6-01 analysis region of the EWMP Area identified in the EWMP due to the interconnected nature of the MS4, until such time as a new project site or sites are identified and the Parties enter into a new cost-sharing MOU for the project(s) to replace this agreement.

Section 3. The PARTIES agree:

- a. Upon execution of this agreement by all Parties, the City of Hermosa Beach will return all funds, both expended and unexpended, that were deposited with Hermosa Beach for the design of the GIP, in the following amounts:

PARTY	Distributed Cost by Agency
City of Manhattan Beach	\$21,240.90
City of Redondo Beach	\$431,615.05
City of Torrance	\$281,229.50

- b. Upon execution of this agreement, Hermosa Beach will fund \$160,000 and Redondo Beach will manage a feasibility study to identify feasible location(s) for an alternative project or projects in Redondo Beach, and additional alternative location(s) within Hermosa Beach if the project or project locations in Redondo Beach do not feasibly and economically achieve the water quality limits set forth in the MS4 permit, in collaboration with Hermosa Beach staff, subject to the limitation that a project (or projects) in Hermosa

Beach shall capture no more than 150% of Hermosa Beach's contribution to the Herondo Storm Drain (approximately 20.4 %). The following parameters will apply to the feasibility study:

- i. The City of Redondo Beach shall serve as lead agency for the feasibility study.
- ii. The selection of the consultant to conduct the study will be made by majority vote of the EWMP staff group, and in accordance with Redondo Beach purchasing policies.
- iii. The goal of the feasibility study is to identify a feasible and economically efficient project (or group of feasible projects) that can capture the required volume of stormwater to achieve compliance with the EWMP and MS4 Permit.
- iv. The feasibility study shall evaluate up to five potential project sites, and additional sites may be added upon approval by all Parties.
 - i. The project sites that may be studied include, but are not limited to:
 1. 700 and 800 blocks of N. Francisca Street (RB)
 2. Perry Allison Park – (RB)
 3. Expansion of Low Flow Diversion in Herondo Street (RB-already included in EWMP)
 4. Herondo Street between N. Harbor Drive and Pacific Coast Highway
 5. Additional sites in Redondo Beach or Hermosa Beach to be determined by EWMP staff group as explained below.
- v. The feasibility study shall study the feasibility of the sites for a 30% design.
- vi. The feasibility study shall include the following for each site considered:
 1. Site Description – Includes a description of the project site boundaries, preliminary constraints, summary of the geotechnical desktop study, and a summary of the hydrology for each site studied.
 2. Regional Stormwater BMP Design Components – includes a description of the BMP units available for pretreatment and storage/infiltration of the prescribed treatment volume and the relative cost implications to construct each of these.
 3. Site geotechnical investigation to determine technical feasibility Constructability and impact analysis, including consideration of potential utility, business, and residential interference.
 4. Public Input and Outreach Component – Consultant shall conduct up to two public meetings, one in Hermosa Beach (if a potential site is located in Hermosa Beach) and one in Redondo Beach, to share the feasibility study information with the community, receive input and assess support for the studied project locations.
 5. Conclusion – the study shall include a ranking of the sites based on all of the information described in 1-4 above.
- vii. Should the initial stages of the feasibility study show a high probability that the sites in Redondo Beach cannot feasibly and economically achieve the water quality limits set forth in the MS4 permit, in the interest of time, the consultant

- shall then also study up to three sites in Hermosa Beach, as identified by the Beach Cities EWMP staff group. Any analysis of sites in Hermosa Beach will evaluate the feasibility of siting a project (or projects) to capture no more than 150% of Hermosa Beach's contribution to the Herondo Storm Drain (approximately 20.4 %). This constraint shall be reflected in the scope of work for the feasibility study.
- viii. The Parties may agree to expand the scope of the feasibility study to include additional tasks or locations should additional funding be available through Measure W, or through contribution of the Parties or other sources.
 - c. Notwithstanding the availability of other available funds to pay for some or all of the study, Hermosa Beach agrees to fund the first \$160,000 for the feasibility study, subject to the following condition:
 - i. The \$160,000 contribution by Hermosa Beach shall be reduced by the amount reasonably equivalent, and agreed upon by the design consultant, to the value to the feasibility study of any of the work performed for the GIP that can be applied and used for the alternative sites analyzed in the Feasibility Study.
 - d. Since the regional project compliance date included in the EWMP may not be met, modifications to the EWMP may be required pursuant to (Regional Board regulations and it may be necessary to obtain Regional Board approval for extensions of compliance deadlines through a Time Schedule Order (TSO), or other approved means. The City of Hermosa Beach will take the lead on behalf of the Parties to obtain a TSO or other necessary extensions to implement the terms of this Agreement and provide extended compliance dates. The other Parties will work in good faith to attend meetings with and communicate with the Regional Board and its staff as needed to further the purposes of this Agreement, achieve EWMP compliance, and substitute alternative projects for the GIP.
 - e. Upon completion of the feasibility study, the Parties, following recommendations from the EWMP staff group and through their City Councils, will jointly select a project site or sites and authorize any required changes to the EWMP (which will be subject to approval by the Regional Board).
 - f. The Parties shall then negotiate in good faith a replacement Memorandum of Understanding (Replacement MOU) for cost sharing for the design of project or projects to replace the GIP.
 - g. Redondo Beach shall serve as Lead Agency for the project (or projects) unless a different lead agency is chosen and agreed to by all Parties.

Section 4. In exchange for the obligations above in Section 3, the MOU is hereby dissolved.

Section 5. In exchange for the obligations above in Section 3, the Parties agree to the following release.

a. The Parties hereby fully and forever release and discharge each other, and their respective officers, elected and appointed officials, attorneys, agents, representatives, directors, members, shareholders, employees, successors, and assigns, and each of them, from any and all past, present or future claims, actions, losses, liabilities, causes of action, liens, demands, rights, damages, costs, attorney's fees, interest, expenses, reimbursement and compensation of any nature whatsoever (collectively, "Claims"), whether known or unknown, disclosed or undisclosed, and whether or not anticipated, in any way related to the MOU.

b. This Agreement is in full accord, satisfaction and discharge of any and all claims for compensation or claims of any kind that the Parties may have related to the MOU and against the other Parties.

c. Each of the Parties also waives any and all claims for the recovery of any damages, costs, expenses or fees, including attorney fees associated with the matters and claims released herein.

d. In connection with the release of the Claims described in this Agreement, the Parties, and anyone acting by or through them, waive any and all rights that they may have under the provisions of California Civil Code §1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

In the event that any waiver of the provisions of Section 1542 of the California Code provided for in this Agreement shall be judicially determined to be invalid, voidable or unenforceable, for any reason, such waiver to that extent shall be severable from the remaining provisions of this Agreement, and the invalidity, voidability or unenforceability of the waiver shall not affect the validity, effect, enforceability or interpretation of the remaining provisions of this Agreement.

e. Each party acknowledges and agrees that this Agreement is a compromise and settlement of their disputes and differences, and is not an admission of liability or wrongdoing by any party.

Section 6. Interpretation.

a. All Parties have cooperated in the drafting and preparation of this Dissolution of MOU shall not be construed against any such Party. This Dissolution of MOU is the product of bargained for and arm's length negotiations between the Parties and their counsel. This Dissolution is the joint product of the Parties.

b. This Dissolution of MOU is an integrated contract and sets forth the entire agreement between the Parties hereto with respect to the subject matter contained herein. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties hereto with regard to such subject matter are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied on by any party hereto.

c. All of the covenants, releases and other provisions herein contained in favor of the persons and entities released are made for the express benefit of each and all of the said persons and entities, each of which has the right to enforce such provisions.

Section 7. Further Cooperation. Each party shall perform any further acts and to execute and deliver any further documents that may be reasonably necessary or appropriate to carry out the provisions and intent of this Dissolution of MOU.

Section 8. Law to Govern. This Dissolution of MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

Section 9. Counterparts. This Dissolution of MOU may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument, provided, however, that such counterparts shall have been delivered to all Parties to this Dissolution of MOU.

Section 10.. All Parties have been represented by counsel in the preparation and negotiation of this Dissolution of MOU. Accordingly, this document shall be construed according to its fair language. Any ambiguities shall be resolved in a collaborative manner by the PARTIES and shall be rectified by amending this document as described in Section 11.

Section 11. Amendments. This Dissolution of MOU may not be changed, modified or amended except by written instrument specifying that it amends such agreement and signed by all Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the party making the waiver.

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:

[SIGNATURE PAGES FOLLOW]

CITY OF MANHATTAN BEACH

By: _____

Bruce Moe
City Manager

Date: _____

ATTEST:

By: _____

Liz Tamura
City Clerk

APPROVED AS TO FORM:

By: _____

Special Counsel

CITY OF TORRANCE

By: _____
Patrick J. Furey, Mayor

Date: _____

ATTEST:

By: _____
Rebecca Poirier
City Clerk

APPROVED AS TO FORM:

By: _____
Patrick Q. Sullivan, City Attorney

CITY OF REDONDO BEACH

By: _____
William C. Brand, Mayor

Date: _____

ATTEST:

By: _____
Eleanor Manzano
City Clerk

APPROVED AS TO FORM:

By: _____
Mike Webb, City Attorney

CITY OF HERMOSA BEACH

By: _____
Mary Campbell
Mayor

Date: _____

ATTEST:

By: _____
Suja Lowenthal
Acting City Clerk

APPROVED AS TO FORM:

By: _____
Michael Jenkins, City Attorney