

COOPERATIVE AGREEMENT FOR PARTICIPATION IN THE SOUTHERN CALIFORNIA STORMWATER MONITORING COALITION

AGREEMENT NO. SMC-2024-01

THIS AGREEMENT, is made and entered effective July 1, 2024 or the date that the twelfth entity executes this AGREEMENT, whichever is later, by and between the signatories to this AGREEMENT, which shall consist of at least twelve of the following entities: County of Orange, the Los Angeles County Flood Control District, the County of San Diego, the Ventura County Watershed Protection District, the Riverside County Flood Control and Water Conservation District, the San Bernardino County Flood Control District, the City of Long Beach, the City of Los Angeles, the City of San Diego, the California Regional Water Quality Control Board - Los Angeles Region (Los Angeles Regional Board), the California Regional Water Quality Control Board - Santa Ana Region (Santa Ana Regional Board), the California Regional Water Quality Control Board - San Diego Region (San Diego Regional Board), the State Water Resources Control Board (State Water Board), the California Department of Transportation (CALTRANS), and the Southern California Coastal Water Research Project (SCCWRP). The signatories are hereinafter sometimes jointly referred to as the "PARTIES" and individually as "PARTY". The County of Orange, the Los Angeles County Flood Control District, the County of San Diego, the Ventura County Watershed Protection District, the Riverside County Flood Control and Water Conservation District, the San Bernardino County Flood Control District, the City of Long Beach, the City of Los Angeles, and the City of San Diego, if signatories, are sometimes jointly referred to as "MUNICIPAL PARTIES". These MUNICIPAL PARTIES with CALTRANS and SCCWRP are collectively referred to as "FUNDING PARTIES" and individually referred to as "FUNDING PARTY". The Los Angeles Regional Board, Santa Ana Regional Board, and San Diego Regional Board, if signatories, are sometimes jointly referred to as "REGIONAL BOARDS."

WITNESSETH

WHEREAS, Section 402(p) of the Clean Water Act (33 U.S.C. § 1342(p)) contains provisions for municipal and industrial stormwater discharge permits; and,

WHEREAS, these provisions require the control of pollutants from stormwater discharges by requiring a National Pollutant Discharge Elimination System (NPDES) permit under authority granted by the United States Environmental Protection Agency (U.S. EPA), to the State Water Board and the nine regional water quality control boards to allow the lawful discharge of stormwater into waters of the United States; and,

WHEREAS, the REGIONAL BOARDS have issued NPDES stormwater permits in their respective regions naming the counties, cities, and flood control/watershed protection districts under their jurisdiction as permittees; and,

WHEREAS, MUNICIPAL PARTIES to this AGREEMENT are acting on behalf of their permittees within their jurisdiction with respect to their countywide or regionwide NPDES stormwater permit pursuant to local agreements; and,

WHEREAS, CALTRANS has received a statewide NPDES stormwater permit from the State Water Board; and,

WHEREAS, all the NPDES stormwater permits issued to the MUNICIPAL PARTIES and CALTRANS have requirements for extensive monitoring and encourage inter-jurisdictional cooperation in monitoring, stormwater research and management; and,

WHEREAS, the State Water Board has established a Surface Water Ambient Monitoring Program to integrate existing water quality monitoring activities of the State Water Board and the REGIONAL BOARDS, and to coordinate with other monitoring programs; and,

WHEREAS, the mission of SCCWRP, a Joint Powers Authority established in 1969, is to contribute to the scientific understanding of linkages among human activities, natural events and the health of the southern California coastal environment, and whose goal is to develop, participate in and coordinate programs to further this mission; and,

WHEREAS, the County of Orange, Los Angeles County Flood Control District, the County of San Diego, the Ventura County Watershed Protection District, the Riverside County Flood Control and Water Conservation District, the San Bernardino County Flood Control District, the City of Long Beach, the REGIONAL BOARDS, and SCCWRP through an agreement entered in 2001 (Agreement D99-072) identified and prioritized the research needs to begin to develop the methodologies and assessment tools to understand more effectively the urban stormwater and non-stormwater (anthropogenic) impacts on receiving waters and undertook some initial collaborative projects; and,

WHEREAS, the Southern California Stormwater Monitoring Coalition ("SMC"), which is currently comprised of all the entities that have executed this AGREEMENT, has a Memorandum of Understanding with the U.S EPA Office of Research and Development to collaborate with the SMC to facilitate the development of scientific and technical tools for stormwater program implementation, assessment, and monitoring; and

WHEREAS, Agreement D99-072 had a term of 5 years and expired on February 2006; and,

WHEREAS, the parties to Agreement D99-072, as well as the City of Los Angeles, the State Water Board, and CALTRANS, subsequently entered into Agreement D06-049 to continue the work started under Agreement D99-072. through June 4, 2013; and,

WHEREAS, the parties to Agreement D06-049, subsequently entered into Agreement D13-014 to continue the work started under Agreement D06-049 for an additional five-year period through June 30, 2019; and,

WHEREAS, the parties to Agreement D13-014, subsequently entered into Agreement MA-080-19010685 to continue the work started under Agreement D13-014 for an additional five-year period through June 30, 2024; and,

WHEREAS, many of the scientific and technical tools for stormwater program implementation, assessment and monitoring are still not fully developed, as described in the updated SMC 2020 Research Agenda, and the collaborative experience of participation in the SMC has proven beneficial in acquiring knowledge about urban stormwater and non-stormwater (anthropogenic) impacts on receiving waters; and,

WHEREAS, the PARTIES desire to continue the work of the SMC for future years and to streamline the approval of collaborative projects through annual operating budgets reflecting the specific projects each PARTY seeks to fund.

NOW, THEREFORE, IT IS AGREED by and between the PARTIES hereto as follows:

Section 1. **PURPOSE.** This AGREEMENT is entered into for the purpose of continuing the implementation of the SMC 2020 Research Agenda, including subsequent updates ("PROGRAM"). The key focus of the PROGRAM is to develop scientific and technical tools for stormwater program implementation, assessment, and monitoring that are currently not fully developed or require updating and, as a result, impede effective stormwater management.

Section 2. **TERM.** The term of this AGREEMENT shall commence July 1, 2024 or the date this Agreement is fully executed, whichever is later, and shall continue until June 30, 2029. The AGREEMENT is considered fully executed on the first date that twelve of the entities listed in the first paragraph of this AGREEMENT have executed this AGREEMENT. Entities listed in the first paragraph of this AGREEMENT that do not execute the AGREEMENT shall lose their status as members of the SMC and shall not be bound by this Agreement unless and until they execute this AGREEMENT.

Section 3. **STORMWATER MONITORING COALITION.** The PROGRAM shall be overseen by the SMC Steering Committee. Each PARTY shall appoint an authorized member and an alternate who acts for the member in their absence, to the SMC Steering Committee.

- a. The members of the SMC Steering Committee shall, by majority vote, elect a Chair and a Vice-chair from amongst its membership to serve a one-year term from July 1st to June 30th. The Vice-chair shall serve as Chair in the absence of the Chair. Elections will be scheduled in advance of the July 1st term start date. The SMC Steering Committee shall meet at least quarterly each year. The Chair may request additional special meetings if necessary.

- b. SCCWRP shall serve as Treasurer ("TREASURER") for the SMC. The TREASURER shall have the following duties and responsibilities: 1) charge of the depositing and custody of all funds held by the SMC; 2) issuing requests for qualifications, proposals, bids and contracts, 3) management of contracts; 4) budget development and oversight with accounting of expenditures; 5) issuing of invoices and receipt of payments, and 6) other duties described in Section 5 below.
- c. The SMC Steering Committee shall hire (through SCCWRP as TREASURER) an independent contract employee, who shall act as the Executive Director to the SMC. The Executive Director's duties, roles, and responsibilities shall include being the SMC's overall day-to-day liaison with its members and providing professional and administrative assistance to the SMC as directed by the SMC Steering Committee. The Executive Director shall report directly to the Chair.
- d. The Executive Director and Treasurer through the oversight of the SMC Steering Committee shall be responsible for the preparation and implementation of an annual operating budget ("BUDGET") and separate research implementation agreements ("RESEARCH IMPLEMENTATION AGREEMENTS"), as necessary, to fund stormwater program implementation, assessment and monitoring and research studies. Water quality data from research studies will be made available to the PARTIES.
- e. The SMC Steering Committee shall prepare an Annual Report for the PARTIES by October 1 of each year, describing the progress made in the prior year ending June 30.
- f. The Steering Committee can adopt Bylaws or similar meeting procedure rules with approval by twelve of its members.
- g. The Steering Committee shall convene a panel of experts in stormwater research and management, at least once during the term of this Agreement, to review and update the SMC 2020 Research Agenda. The 2020 Research Agenda shall serve as the SMC's Workplan and is subject to updates, including any additional project(s) added each subsequent Fiscal Year.

Section 4. **PROGRAM BUDGET AND COSTS.**

- a. The SMC Steering Committee shall develop a proposed BUDGET before December 15 of each year and provide it to the FUNDING PARTIES for the following fiscal year that starts the following July 1st. The BUDGET shall contain an estimate of all planned expenditures, including but not limited to all expenditures associated with funding the Executive Director position, an estimate of the payment required from each FUNDING PARTY for the following fiscal year based on the specific projects each FUNDING PARTY seeks to

- fund, and a description of the planned project work and designated lead PARTY for each project. FUNDING PARTIES may choose the project(s) they wish to participate in and fund through the annual BUDGET development process. FUNDING PARTIES are not required to fund any project they choose not to participate in.
- b. The funding shares for projects identified in the BUDGET shall be equal for each FUNDING PARTY who chooses to participate, except for the City of Long Beach, which shall pay a half funding share for each project.
 - c. The BUDGET shall not propose that any individual FUNDING PARTY share exceed one hundred thousand dollars (\$100,000) for any fiscal year.
 - d. The FUNDING PARTIES who fund one or more projects included in the BUDGET shall be permitted to review and approve that BUDGET. The annual BUDGET shall be deemed approved when affirmative written responses are provided by at least 3/4 of the FUNDING PARTIES that are permitted to approve the BUDGET.
 - e. Research studies that cannot be accommodated under the current BUDGET of that fiscal year may be accomplished through RESEARCH IMPLEMENTATION AGREEMENTS, prepared by the SMC Steering Committee. These RESEARCH IMPLEMENTATION AGREEMENTS shall designate a lead PARTY or other agency to the research study and identify potential funding sources sufficient to complete the research study. The PARTIES to this AGREEMENT, as well as other entities that are not signatories to this AGREEMENT, may execute RESEARCH IMPLEMENTATION AGREEMENTS. Parties to these RESEARCH IMPLEMENTATION AGREEMENTS may provide funding or other in-kind resources. Each of these RESEARCH IMPLEMENTATION AGREEMENTS will be submitted for approval to the appropriate governing board and/or official with authority to enter into contracts and are not binding on the parties to that agreement until so approved.

Section 5. **INVOICES AND FISCAL MANAGEMENT.** The TREASURER shall invoice each FUNDING PARTY for its share of the approved BUDGET at the beginning (July 1st) of each fiscal year. Each FUNDING PARTY shall pay its share of the BUDGET within 45 days of the date of the invoice. Each FUNDING PARTY invoice shall be based on its share of the approved BUDGET, reduced for any surplus identified in the prior fiscal year end accounting and any interest earned. Interest will not be paid but will be credited against the FUNDING PARTY'S share of the approved BUDGET.

The TREASURER shall notify each FUNDING PARTY if it appears that costs may exceed the total BUDGET, or project costs identified in the BUDGET, approved by the FUNDING PARTIES. The TREASURER shall prepare a fiscal year end

accounting within 90 days of the end of the fiscal year. If the fiscal year end accounting results in costs (net of interest earnings) exceeding the sum of deposits, and the TREASURER has notified and obtained approval from the FUNDING PARTIES in the form of a revised approved BUDGET, the TREASURER shall invoice each FUNDING PARTY for its prorated share of the excess cost up to the amount of the revised approved BUDGET. Each FUNDING PARTY shall pay the invoice within 45 calendar days of the date of the invoice. If a revised BUDGET is not approved, the TREASURER shall provide recommendations for review and approval of the FUNDING PARTIES, including steps from modification to termination of certain research studies/projects, to assure that costs do not exceed the total BUDGET while preserving completed research projects to the maximum extent.

The TREASURER shall issue and manage contracts for the SMC consistent with the SMC's established policies and procedures, which shall be provided to PARTIES upon request. The PARTIES shall be notified of the intent to issue contracts to perform the work approved in the BUDGET, shall be permitted to participate in the preparation and review of the scope of work for such contracts, and to serve on the committee evaluating consultant qualifications/proposals.

The TREASURER shall be entitled to charge administrative costs, not to exceed 5 percent of the annual BUDGET, for the services provided.

Upon termination of this AGREEMENT, a final accounting shall be performed by the TREASURER. If costs (net of interest earnings) exceed the sum of the deposits and the TREASURER has notified and obtained approval from the FUNDING PARTIES in the form of a revised approved BUDGET, the TREASURER shall invoice each FUNDING PARTY for its prorated share of the excess. Each FUNDING PARTY shall pay the invoice within 45 days of the date of the invoice. If the sum of the deposits exceeds the costs, the TREASURER shall reimburse to each PARTY its prorated share of the excess, within 45 days of the final accounting. Interest earnings will be used to offset the FUNDING PARTIES' share of program costs and will not be refunded to the FUNDING PARTIES except upon final termination of the AGREEMENT.

Section 6. **GRANTS.** All PARTIES, excepting the State Water Board and the REGIONAL BOARDS, may pursue, pursuant to each Party's governing rules and policies, grants to provide funding for the BUDGET and RESEARCH IMPLEMENTATION AGREEMENTS.

Section 7. **ADDITIONAL PARTIES.** It is recognized that there may be other entities who wish to participate in and provide funding for the PROGRAM. Any public agency that is directly or indirectly authorized to research or implement measures that affect stormwater quality and quantity may seek to become a member of the SMC. A new Member shall be added to the SMC when such prospective new Member:

- a. Adopts a resolution approving entry into the SMC, designating the requisite number of Primary and Alternate Members, acknowledging, and agreeing to be bound by this Master Agreement,
- b. Is approved for admission to the SMC by a vote of at least twelve of the existing Parties to this AGREEMENT, and
- c. Executes this AGREEMENT.

Section 8. **REGULATORY RESPONSIBILITIES AND OBLIGATIONS.** It is mutually understood and agreed that, merely by entering into this AGREEMENT, the regulatory responsibilities and obligations of each PARTY are in no manner modified. Any such responsibilities and obligations remain the same, while this AGREEMENT is in force, as they were before this AGREEMENT was made.

Section 9. **AMENDMENT.** This AGREEMENT may be amended upon the written approval of all the PARTIES.

Section 10. **LIABILITY.** It is mutually understood and agreed that, merely by virtue of entering into this AGREEMENT, each PARTY neither relinquishes liability for its own action nor assumes liability for the actions of other PARTIES. It is the intent of the PARTIES that liability of each PARTY shall remain the same, while this AGREEMENT is in force, as it was before this AGREEMENT was made. Liability provisions in RESEARCH IMPLEMENTATION AGREEMENTS shall be addressed separately in each such agreement.

Section 11. **TERMINATION.** Any PARTY wishing to terminate its participation in this AGREEMENT shall provide ninety (90) days written notice to all the other PARTIES of its intent to withdraw. Such termination shall be effective ninety (90) days after the notice is received in accordance with the provisions in Section 19 of this AGREEMENT ("EFFECTIVE DATE OF TERMINATION"). Termination does not release the withdrawing party from commitments of resources to projects made prior to the notice of termination.

The remaining PARTIES may continue in the performance of the terms and conditions of this AGREEMENT, or may, upon 3/4 affirmative vote of the remaining PARTIES, terminate this AGREEMENT.

Section 12. **AVAILABILITY OF FUNDS.** The obligation of each FUNDING PARTY is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the FUNDING PARTIES to expend money in excess of appropriations authorized by law. All obligations of CALTRANS under the terms of this Agreement are subject to the appropriations of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission.

Section 13. **NO THIRD-PARTY BENEFICIARIES.** Nothing expressed or mentioned in this AGREEMENT is intended or shall be construed to give any person, other than the PARTIES hereto, any legal or equitable right, remedy or claim under or in respect of this AGREEMENT or any provisions herein contained. This AGREEMENT and any conditions and provisions hereof is intended to be and is for the sole and exclusive benefit of the PARTIES hereto and the others mentioned above, and for the benefit of no other person.

Section 14. **ACKNOWLEDGEMENT BY SIGNATORIES.** Each of the PARTIES (and all subsequent parties to this AGREEMENT) hereby acknowledge that the State Water Board and the REGIONAL BOARDS serve in regulatory capacities over many of the PARTIES and subsequent parties to this Agreement, including (without limitation) as the permitting authorities for NPDES stormwater permits. Nothing in this Agreement is intended to alter the nature or scope of those regulatory relationships in any manner whatsoever.

Section 15. **REFERENCE TO CALENDAR DAYS.** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

Section 16. **SEVERABILITY.** If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

Section 17. **DISPUTE RESOLUTION.** The PARTIES desire to resolve as quickly and as amicably as possible any disputes as to the meaning of any portion of this AGREEMENT, the validity of any determination or calculation, or the rights or obligations of the PARTIES pursuant hereto. Therefore, prior to initiation by a PARTY of any litigation or other proceeding in connection with this AGREEMENT, the PARTIES shall meet and make good-faith efforts to resolve any such disputes on an informal basis. The PARTY that first raises a claim against other PARTIES in connection with a dispute shall be responsible for providing written notice to such other PARTIES and thereby initiating the informal dispute resolution efforts. Such informal efforts may include mediation of the dispute if agreed to by the PARTIES involved in the dispute. Not sooner than thirty (30) days after diligent efforts to resolve a dispute have been initiated, if the PARTIES have been unable to resolve the dispute on such informal basis, any PARTY involved in the dispute may, in its discretion and after providing written notice to the other PARTIES that the informal dispute-resolution efforts are being terminated, proceed to take any and all such action to enforce or protect its rights as permitted by law and/or this AGREEMENT. The AGREEMENT shall be governed, performed, and interpreted under the laws of the State of California. If a PARTY initiates informal dispute resolution with respect to a dispute, any statutory limitation for filing of a court action or commencement of any other proceeding shall be tolled for a period of days equal to the number of days that elapsed between delivery of the notice

initiating informal dispute resolution and the notice terminating informal dispute-resolution.

Section 18. **SUCCESSORS AND ASSIGNS.** This AGREEMENT, and the benefits and obligations hereunder, are not assignable without prior written consent of the Steering Committee. Any attempt to assign any portion of this Agreement without prior written consent shall be null and void.

Section 19. **NOTICES.** All notices required or desired to be given under this AGREEMENT shall be in writing and (a) delivered personally, or (b) sent by certified mail, return receipt requested to the addresses specified below for each PARTY, provided each PARTY may change the address for notices by giving the other PARTIES at least ten (10) days written notice of the new address. Notices shall be deemed received when actually received in the office of the addressee or when delivery is refused, as shown on the receipt of the U.S. Postal Service, or other person making the delivery.

Director
OC Public Works
County of Orange
P.O. Box 4048
Santa Ana, CA 92702-4048

Chief Engineer
Los Angeles County Flood Control District
Stormwater Quality Division
900 S. Fremont Ave.
Alhambra, CA 91803

Director
Ventura County Watershed Protection District
800 S. Victoria Ave.
Ventura, CA 93009-1610

General Manager-Chief Engineer
Riverside County FC&WCD
1995 Market St.
Riverside, CA 92501

Chief Flood Control Engineer
San Bernardino County Flood Control District
825 E. 3rd Street
San Bernardino, CA 92415-0835

Assistant Director of Public Works
County of San Diego
5510 Overland Ave., Suite 410
San Diego, CA 92123

Director of Public Works
City of Long Beach
City Hall, 5th Floor
411 W. Ocean Boulevard
Long Beach, CA 90802

Director of Public Works
City of San Diego
9370 Chesapeake Dr., Suite 100
San Diego, CA 92123

President, Board of Public Works
City of Los Angeles
200 North Spring St, Suite 361
Los Angeles, CA 90012

Executive Officer
Los Angeles Regional Board
320 West 4th St., Suite 200
Los Angeles, CA 90013

Executive Officer
Santa Ana Regional Board
3737 Main St., Suite 500
Riverside, CA 92501

Executive Officer
San Diego Regional Board
2375 Northside Drive, Suite 100
San Diego, CA 92108

Chief Environmental Engineer
CALTRANS MS-27
P.O. Box 942874
Sacramento, CA 94274-0001

Executive Director
State Water Board
P.O. Box 100
Sacramento, CA 95812-0100

Executive Director
SCCWRP
3535 Harbor Blvd.
Costa Mesa, CA 92626

Section 20. **EXECUTION OF AGREEMENT.** This AGREEMENT may be executed in counterparts and the signed counterparts shall constitute a single instrument.

Section 21. **REPRESENTATIVE AUTHORITY.** Each undersigned representative of a PARTY to this AGREEMENT certifies that they are fully authorized to enter into the terms and conditions of this AGREEMENT and to execute and legally bind the PARTY that they represent to this AGREEMENT.

Section 22. **HEADINGS NOT CONTROLLING.** Headings used in this AGREEMENT are for reference purposes only and shall not be considered in construing this AGREEMENT.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the opposite their respective signatures: