

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU), made and entered into as of the date of the last signature set forth below by and between the CITY OF CARSON, a general law city (hereinafter referred to as CARSON) and the COUNTY OF LOS ANGELES, a political subdivision of the State of California (hereinafter referred to as COUNTY). Collectively, these entities shall be known herein as PARTIES or individually as PARTY.

### WITNESSETH

WHEREAS, CARSON and the COUNTY propose to improve the water quality of stormwater and urban runoff from their respective land areas; and

WHEREAS, CARSON proposes to design, construct, operate, and maintain the Carson Stormwater and Runoff Capture Project at Carriage Crest Park (hereinafter referred to as the PROJECT), which is comprised of WATER QUALITY IMPROVEMENTS and restoration of RECREATIONAL FACILITIES; and

WHEREAS, the PROJECT will be designed to provide capture of stormwater and urban runoff from four hundred fifty-five (455) acres within CARSON and three hundred nineteen (319) acres within the COUNTY; and

WHEREAS, the PROJECT will be designed to provide treatment of the eighty-fifth (85th) percentile, twenty-four (24) hour storm event runoff volume of twenty-seven (27) acre-feet through constructed WATER QUALITY IMPROVEMENTS; and

WHEREAS, the twenty-seven (27) acre-feet of treatment will be achieved through a combination of physical storage of 13.46 acre-feet and diversion to the sanitary sewer at a rate that will capture a total of twenty-seven (27) acre-feet over the course of the eighty-fifth (85th) percentile, twenty-four (24) hour design storm event; and

WHEREAS, of the total twenty-seven (27) acre-feet of runoff volume treated by the PROJECT, fifteen (15) acre-feet is from CARSON and twelve (12) acre-feet is from the COUNTY; and

WHEREAS, the PROJECT is in the Machado Lake Watershed, and is identified in the Enhanced Watershed Management Program for the Dominguez Channel Watershed Management Area Group; and

WHEREAS, the PROJECT will be constructed at the Carriage Crest Park located 900 S. Figueroa Street, Carson, CA 90745, which park is owned and operated by CARSON; and

WHEREAS, CARSON has received thirteen million dollars (\$13,000,000) in funding from the California Department of Transportation through a Cooperative Implementation Agreement to fund the PROJECT; and

WHEREAS, the COUNTY desires to provide an additional not-to-exceed amount of five million, seven hundred twenty thousand dollars (\$5,720,000) to Carson to account for planning, engineering design, and construction costs associated with upsizing of the previously planned PROJECT to capture the eighty-fifth (85th) percentile, twenty-four (24) hour storm event runoff volume from the COUNTY's three hundred nineteen (319) acres tributary to the PROJECT; and

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

WHEREAS, CARSON has retained the services of the Sanitation Districts of Los Angeles County (SANITATION DISTRICTS) to manage the planning, engineering design, and construction of the PROJECT; and

WHEREAS, the PROJECT will be designed to discharge the captured stormwater and urban runoff to a sanitary sewer for treatment under an Industrial Waste Permit from SANITATION DISTRICTS; and

WHEREAS, CARSON has applied for a permit from the Los Angeles County Flood Control District (DISTRICT) for modifications to the DISTRICT's infrastructure; and

WHEREAS, CARSON will enter into a separate long-term Operation and Maintenance Agreement with the DISTRICT for the PROJECT; and

WHEREAS, PARTIES will jointly fund the operation and maintenance of the WATER QUALITY IMPROVEMENTS of the PROJECT; and

WHEREAS, CARSON will solely fund the operation and maintenance of the RECREATIONAL FACILITIES of the PROJECT; and

WHEREAS, the PROJECT is in the joint interest of PARTIES and will improve water quality and quality of life for citizens and provide opportunities for water conservation.

#### DEFINITIONS

The following definitions shall apply to this MOU:

CALTRANS shall refer to the California Department of Transportation;

RECREATIONAL FACILITIES include, but are not limited to recreational fields, irrigation systems, and landscaping;

SANITATION DISTRICTS shall refer to the sanitation districts of the County of Los Angeles existing under Health & Safety Code Sections 4700, et seq.;

O&M shall refer to an Operations and Maintenance, the operation and maintenance requirements for all PROJECT components based on the final PROJECT design, and the operation and maintenance responsibilities of CARSON, including but not limited to clean out of pretreatment system, maintenance of telemetry system, maintenance of pumps and piping and treatment surcharge fees paid to SANITATION DISTRICTS;

O&M MANUAL shall refer to an Operations and Maintenance Manual, a document that describes in detail the operation and maintenance requirements for all PROJECT components based on the final PROJECT design, and the operation and maintenance responsibilities of CARSON, including but not limited to clean out of pretreatment system, maintenance of telemetry system, maintenance of pumps and piping and treatment surcharge fees paid to SANITATION DISTRICTS;

PROJECT refers to a storm water and runoff capture project located towards the south-westerly section of the City of Carson within the Carriage Crest Park located at 23800 Figueroa Street, in Carson, California, which will include WATER QUALITY IMPROVEMENTS and restoration of RECREATIONAL FACILITIES. The PROJECT will involve the diversion and pretreatment of stormwater from an existing storm drain system at a rate of forty-five (45) cubic feet per second. The storm water will then be diverted to a subsurface storage reservoir located under Carriage Crest Park and ultimately discharged to the sanitary sewer for treatment at the Joint Water Pollution Control Plant or returned to the storm drain system on an as-needed basis; and

WATER QUALITY IMPROVEMENTS include but are not limited to a storm drain diversion system, a catch basin diversion system, pretreatment devices, an underground storm water storage facility, a dewatering system to sanitary sewer, including a pump station and a discharge line, a telemetry system, and a storm drain return pipeline.

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

1. CARSON AGREES:
  - a. To prepare plans, specifications, and cost estimate for the PROJECT.
  - b. To utilize thirteen million dollars (\$13,000,000) in funding from CALTRANS to design and construct the PROJECT.
  - c. To prepare, as lead agency, and obtain approval of any necessary environmental documents as required under the California Environmental Quality Act for the PROJECT.

- d. To obtain and comply with all applicable regulatory permits, approvals, and requirements for the PROJECT; to advertise the PROJECT for construction bids; to award and administer the construction contract; to modify approved plans and specifications for the PROJECT necessitated by unforeseen or unforeseeable field conditions encountered during construction as necessary to ensure the PROJECT is constructed as intended; to cause the PROJECT to be constructed in accordance with the approved plans and specifications; and
- e. To prepare an O&M MANUAL, a document that describes in detail the operation and maintenance requirements for all WATER QUALITY IMPROVEMENT components based on the final PROJECT design, including but not limited to clean out of pretreatment devices, maintenance of a telemetry system, maintenance of pumps and piping and treatment surcharge fees paid to SANITATION DISTRICTS and to provide the COUNTY the opportunity to review and provide comments on the O&M MANUAL prior to finalizing the O&M MANUAL.
- f. Upon award of a construction contract by CARSON for PROJECT, to notify PARTIES of any request for a change order related to the construction of the PROJECT that exceeds five percent (5%) of the total contract amount within ten (10) business days of receipt of the request, and to further notify PARTIES of CARSON's approval thereof, or if it does not so approve, the reasons therefor, within ten business days of receipt of the request. Any change order that will result in the total cost of the PROJECT to exceed eighteen million, two hundred thousand dollars (\$18,200,000) will require approval of all PARTIES prior to CARSON's approval of the change order.

To invoice the COUNTY based on actual expenditures of the engineering design and construction of the PROJECT no later than June 30, 2019, for expenditures incurred in Fiscal Year 2018-19 and no later than June 30, 2020, for expenditures incurred in Fiscal Year 2019-20. The total invoiced amounts to the COUNTY shall not exceed five million, seven hundred twenty thousand dollars (\$5,720,000). This amount includes a 10% contingency as shown in Table 2 of Exhibit A.

- g. Within ten (10) business days of CARSON's receipt of written notice that PROJECT is complete, to notify PARTIES that CARSON approves the construction work for PROJECT or, if it does not so approve, the reasons therefor.
- h. Upon completion of the PROJECT, to assume ownership, operation, and maintenance responsibilities for WATER QUALITY IMPROVEMENTS and RECREATIONAL FACILITIES.

- i. Upon completion of construction of PROJECT, to provide as-built plans to COUNTY.
- j. Upon completion of the PROJECT, to operate and maintain WATER QUALITY IMPROVEMENTS pursuant to the O&M MANUAL.
- k. Upon completion of the PROJECT, to provide COUNTY with contact information for person(s) responsible for the operation and maintenance activities set forth in this MOU.
- l. Upon completion of the PROJECT, to invoice the COUNTY for the operation and maintenance of WATER QUALITY IMPROVEMENTS based on actual expenditures at the end of each fiscal year starting in Fiscal Year 2019-20 according to the cost allocation formula in Table 3 of Exhibit A and provide an explanation if expenditures exceed the annual cost estimates.
- m. Upon completion of the PROJECT, to maintain and comply with all applicable regulatory permits and requirements associated with operation and maintenance of the PROJECT.

2. COUNTY AGREES:

- a. COUNTY agrees to provide CARSON with a total, not-to-exceed amount of five million, seven hundred twenty thousand dollars (\$5,720,000) in Fiscal Years 2018-19 and 2019-20 to finance the capital costs of the PROJECT, in excess of CALTRANS' contribution to ensure capture of the 85th percentile, 24-hour storm event runoff volume from COUNTY.
- b. COUNTY agrees to approve or disapprove of any change order to the construction of the PROJECT requested by CARSON within ten (10) working days of receipt of written request from CARSON. Approval shall not be unreasonably withheld. In the event of a disagreement, the issue shall be mutually referred to sequentially higher administrative levels within the PARTIES until the issue is resolved. If the PARTIES are still unable to resolve their disagreement, CARSON and the COUNTY reserve all rights and remedies at law and in equity.
- c. COUNTY agrees to provide CARSON annual funding for the operation and maintenance of WATER QUALITY IMPROVEMENTS, starting in Fiscal Year 2019-20 according to the funding allocation shown in Table 3 of Exhibit A.
- d. COUNTY agrees to pay CARSON within sixty (60) days of receipt of invoice.

- e. COUNTY agrees to provide CARSON any comments to CARSON's proposed O&M Manual within ten (10) business days of receipt.
3. IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:
- a. This MOU shall become effective on the last date of execution by a PARTY and shall remain in effect until the COUNTY has paid all outstanding invoices for costs associated with the PROJECT incurred up to June 30, 2022.
  - b. PARTIES shall have no financial obligation to any other PARTY under this MOU except as herein expressly provided.
  - c. PARTIES may elect to partner in the pursuit of grant funding opportunities for the PROJECT.
  - d. The term of this MOU shall be 4 years.
  - e. Each PARTY shall indemnify, defend, and hold harmless each other PARTY, including its special districts, elected and appointed officers, employees, agents, attorneys, and designated volunteers from and against any and all liability, including, but not limited to demands, claims, actions, fees, costs, and expenses (including reasonable attorney's and expert witness fees), arising from or connected with the respective acts of each PARTY arising from or related to this MOU; provided, however, that no PARTY shall indemnify another PARTY, which has committed negligent or willful misconduct for that other PARTY'S own negligence or willful misconduct.

#### GENERAL PROVISIONS

Cooperation. The Parties shall fully cooperate with one another to attain the purposes of this MOU.

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.

Voluntary. This MOU is voluntarily entered into to attain the purposes set forth in this MOU.

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.

**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.

**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.

**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.

**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.

**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.

**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.

**Termination of O&M Portion of MOU.** The COUNTY and CITY agree to annually review and agree upon annual O&M costs; if they do not reach agreement on annual O&M costs, they agree to proceed through a meet and confer process and non-binding mediation to reach agreement on the annual O&M costs. Should the parties not reach agreement through such dispute resolution procedures, the CITY and COUNTY reserve the right to terminate the O&M portion of this MOU for any reason upon one-hundred twenty (120) days' prior written notice. In the event of such termination, CARSON shall be entitled to a prorated portion of the COUNTY's annual contribution for the calendar year in which the COUNTY terminates the MOU hereunder. In addition, upon COUNTY's termination, CITY would receive the TMDL compliance credits to which the Parties would be entitled for performance of this MOU.

**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 in entering into this MOU.

Counterparts. This MOU may be executed in counterparts, which together shall constitute the same and entire MOU.

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 email 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 email; or (b) on the third (3) business day following mailing by registered or certified mail (return receipt requested) to the address set forth below.

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.

CARSON: Dr. Maria Williams-Slaughter  
Director of Public Works  
City of Carson Department of Public Works  
701 East Carson Street  
Carson, CA 90745

COUNTY: Mr. Paul Alva  
Principal Engineer  
Los Angeles County Department of Public Works  
P.O. Box 1460  
Alhambra, CA 91802-1460

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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:

COUNTY OF LOS ANGELES

By Amphill George - Moody  
for Director of Public Works


1-18-18  
Date

APPROVED AS TO FORM:

MARY C. WICKHAM  
County Counsel

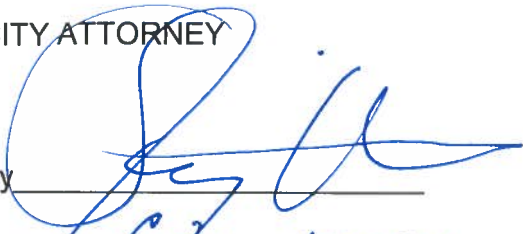
By Rosalinda O...  
Deputy  
for Grace Cheng

CITY OF CARSON

By   
Title CITY MANAGER

2/5/18  
Date

APPROVED AS TO FORM:

CITY ATTORNEY  
By   
Title CITY ATTORNEY

**EXHIBIT A**

**Funding Contributions for Carriage Crest Stormwater and Runoff Capture Project**

Table 1. Project Capital Costs

Tasks	Estimated Cost*
Planning	\$400,000
Engineering Design, Permitting, and Environmental Documents	\$1,200,000
Construction of Water Quality Improvements and Restoration of Recreational Facilities, including procurement of precast storage modules	\$15,600,000
Construction Management and Inspection	\$1,000,000
<b>Total</b>	<b>\$18,200,000</b>

\*Estimated cost for each task is subject to change.

Table 2. Project Capital Cost Allocation

Jurisdiction	Amount beginning in Fiscal Year 2018-19
City of Carson	\$13,000,000
County of Los Angeles	\$5,200,000**
<b>Total</b>	<b>\$18,200,000</b>

\*\*With prior approval from the County, this amount may be increased by a 10% contingency (\$520,000), for a total not-to-exceed amount of (\$5,720,000).

Table 3. Operation and Maintenance Cost Allocation for Water Quality Improvements

Jurisdiction	Design Capture Volume	Percentage	Estimated Annual O&M Cost (Starting Fiscal Year 2019-20)***
City of Carson	15 acre-feet	56%	\$180,000 - \$235,000
County of Los Angeles	12 acre-feet	44%	\$140,000 - \$185,000
<b>Total</b>	<b>27 acre-feet</b>	<b>100%</b>	<b>\$320,000 - \$420,000</b>