

**MEMORANDUM OF AGREEMENT
AMONG
CITY OF FILLMORE, CITY OF OXNARD, CITY OF SANTA PAULA, CITY OF SAN
BUENAVENTURA, AND COUNTY OF VENTURA (PARTIES)
TO PROVIDE EQUAL COST SHARING FOR SANTA CLARA RIVER BACTERIA MONITORING
AND REPORTING PROGRAM**

This Memorandum of Agreement (Agreement or MOA) is entered into effect on October 5, 2016 among the following entities: City of Fillmore, City of Oxnard, City of Santa Paula, City of San Buenaventura, and County of Ventura (collectively referred to as the "Parties" and individually a "Party").

RECITALS

WHEREAS, on July 10, 2010, under Resolution No. R10-006, the Los Angeles Regional Water Quality Control Board (RWQCB) amended the *Water Quality Control Plan for the Los Angeles Region* (Basin Plan) to incorporate a Total Maximum Daily Load (TMDL) for Indicator Bacteria in the Santa Clara River (SCR) Estuary and Reaches 3, 5, 6, and 7;

WHEREAS, on October 4, 2011, the State Water Resources Control Board approved the TMDL, which went into effect on March 21, 2012;

WHEREAS, the SCR Bacteria TMDL listed the cities of Santa Clarita, Fillmore, Santa Paula, and San Buenaventura and the Counties of Los Angeles and Ventura as responsible parties for Municipal Separate Storm Sewer System (MS4) Waste Load Allocations (WLAs). The California Department of Transportation (Caltrans) has been also identified as responsible party. In addition, MS4 Permittees that discharge to Reaches 1 and 2 have WLAs based on allowable exceedance days for the Estuary. Cities and counties that have co-mingled stormwater in the MS4 are jointly and severally responsible for meeting the WLAs assigned to MS4 discharges, unless the dischargers demonstrate that their discharges did not cause or contribute to the exceedances. Consistent with 40 C.F.R. § 122.26(a)(3)(vi), each co-permittee is only responsible for discharges from the MS4s for which it is an operator;

WHEREAS, the Parties are required to initiate receiving water monitoring on October 11, 2016 in accordance with approved In-Stream Compliance Monitoring Plan for Santa Clara River Estuary and Reach 3 Bacteria Total Maximum Daily Load (Final In-Stream Compliance Monitoring Plan) dated May 10, 2016, or as amended; and

WHEREAS, sometime in the future, the RWQCB may require the Parties to initiate outfall water monitoring within 6 months after receipt of RWQCB comments on the "Indicator Bacteria Total Maximum Daily Load Draft Implementation Plan for Lower Santa Clara River Watershed" submitted by the Parties to RWQCB on March 21, 2015, or as amended; and

WHEREAS, sometime in the future, the Caltrans may wish to join this MOA to collaboratively implement required Santa Clara River Bacteria Monitoring and Reporting Program. In such event, Caltrans will be subject to conditions of this MOA including cost share contributions adjusted as appropriate.

NOW, THEREFORE, for valuable consideration, receipt for which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. The term of this Agreement shall begin on October 5, 2016 and end on October 4, 2021.
2. The Parties agree to actively support the monitoring and reporting efforts as required by the SCR Bacteria TMDL during the term of this Agreement by funding *equal contributions* of the total cost of the water monitoring described in the Final In-Stream Compliance Monitoring Plan, which is incorporated herein by this reference, shall not exceed a total of \$32,026.48 (thirty two thousand twenty six and forty eight cents) per year for the Santa Clara River Bacteria TMDL monitoring and reporting activities in accordance with proposed budget in Exhibit A, which is attached hereto and incorporated herein by this reference.
3. Each of the Parties agrees to submit payment within 90 calendar days of receipt of an invoice from the Lead Agency to fund its share of the SCR Bacteria TMDL water monitoring efforts.
4. County of Ventura shall act as the Lead Agency under this Agreement and do all of the following:
 - A. To award and administer a contract for consultant services to conduct the SCR Bacteria TMDL water monitoring during the term of this Agreement. This contract shall require consultant to hold harmless, indemnify and defend all Parties, each Party individually, and each Party's officials, officers, employees and agents. The contract shall further require consultant to have at least: commercial general liability insurance, including contractual liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant; business automobile liability insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant; workers' compensation insurance as required by law; and employer's liability insurance in an amount not less than \$1,000,000 per claimant.
 - B. To furnish the Parties a final accounting of the cost of the SCR Bacteria TMDL water monitoring, within one hundred twenty (120) calendar days after the completion of the activities set forth for that year, provided however, the Parties may grant in writing an extension of time to complete the final accounting.
 - C. To furnish monitoring data to the RWQCB and provide a copy to the Parties as set forth in the Final In-Stream Compliance Monitoring Plan.
 - D. During the term of this Agreement, to act as the Lead Agency for contract management and fiscal coordination in connection with the SCR Bacteria TMDL monitoring.
5. Caltrans may join this Agreement by giving notice in the manner provided in Exhibit B, which is attached hereto and incorporated herein by this reference, to all Parties. Once Caltrans provides such notice, the joining date listed in the notice shall be the effective date of this amendment to the Agreement to include Caltrans; if such joining date is not listed, the effective date of this amendment to the Agreement to include Caltrans shall be thirty (30) calendar days after the date of notice. If Caltrans joins this MOA, Caltrans agrees to pay the County of Ventura for the monitoring and reporting services not exceeding \$5,337.75 (five thousand three hundred thirty seven dollars and seventy five cents) per year as shown in Exhibit A and based on the cost allocation formula and the total estimated

annual cost, attached hereto and made part of the Agreement by this reference. After Caltrans joins this MOA, the first cost share will be prorated to reflect the actual cost to be encumbered by the Parties with Caltrans participation, with a not to exceed Caltrans' cost share of \$5,337.75 (five thousand three hundred thirty seven dollars and seventy five cents) per year. If Caltrans joins this Agreement after the other Parties have already paid the Lead Agency based on the calculation without Caltrans, within ninety (90) calendar days of receipt of Caltrans's payment, the Lead Agency shall submit to each Party a payment for the difference between what that Party actually paid and what that Party owes once Caltrans is a party to the Agreement. Caltrans funding encumbered under this Agreement is evidenced by the signature of its District Budget Manager certifying as to funds in the maximum sum of and not exceeding \$5,337.75 (five thousand three hundred thirty seven dollars and seventy five cents) per year for the SCR Bacteria TMDL monitoring and reporting related activities in accordance with proposed budget as shown at the bottom of Exhibit A and adjusted to include Caltrans in the future to represent Caltrans' share of the work costs. Any cost to be invoiced above this sum will require an amendment to this Agreement.

6. Each of the Parties agrees to pay a five (5) percent administration fee to the Lead Agency for preparing and managing the contracts and budget for SCR Bacteria TMDL monitoring. The administration fee will be calculated from the total consultant contract amount and equally cost shared among the Parties. In any case, this administrative fee, when added to the costs of monitoring and reporting, shall not exceed each Party's contribution amount listed in Exhibit A.
7. Any Party may withdraw from this Agreement for any reason or for no reason at all by giving the other Parties at least thirty (30) calendar days' written notice thereof. The withdrawing Party shall be responsible for its allocated costs up to the date of its withdrawal. The Lead Agency shall notify in writing RWQCB within fourteen (14) calendar days of receiving written notice from any Party that intends to withdraw from this Agreement. From the date of a Party's withdrawal or the date that the withdrawing Party pays all of its allocated costs, whichever is later, that Party shall no longer be bound by any term of this Agreement other than the indemnification and hold harmless provision. If a Party elects to withdraw from cost sharing of SCR Bacteria TMDL monitoring and reporting services before the end of the term of the Agreement, it is agreed that the remaining cost share will be distributed among other Parties based on the existing cost allocation formula. Each Party maximum liability for the MOA defined monitoring and reporting costs shall be limited to the amount reflected in Exhibit A, and incurred by the County up to the date of termination.
8. Each Party shall assume the defense of, indemnify and hold harmless the other Parties and each of their officials, officers, employees and agents from and against any and all actions, damages, liability or claims for death, injury, loss, damage or expense to persons or property to the extent arising from or related to the negligent or willful acts or omissions of the indemnifying and defending Party in connection with SCR Bacteria monitoring and reporting activities, except to the extent such actions, damages, liabilities or claims have arisen from or relate to the negligent or willful acts or omissions of any indemnified Party or Parties, as determined by agreement of all Parties or by judgment by a court of competent jurisdiction. No party shall request a jury apportionment.
9. If Caltrans joins this Agreement, all obligations of Caltrans under the terms of this Agreement are subject to the appropriation of the resources by the Legislature and the allocation of resources by the California Transportation Commission. This Agreement has

been written before ascertaining the availability of federal or State legislative appropriation of funds, for the mutual benefit of the Parties in order to avoid program and fiscal delays that would occur if the Agreement was executed after that determination was made. If Caltrans joins the Agreement, it is valid and enforceable as to Caltrans as if sufficient funds have been made available to Caltrans by the United States Government or California State Legislature for the purposes set forth in this Agreement. If Caltrans joins the Agreement and later learns that the United States Government or the California State Legislature does not appropriate sufficient funds for Caltrans to participate in this Agreement, Caltrans has the option to withdraw from this Agreement by giving notice in the manner provided in Exhibit C, which is attached hereto and incorporated herein by this reference, to all Parties. Should Caltrans exercise its option to withdraw from this Agreement, Caltrans shall remain responsible for its share of liability, if any, incurred while participating in this Agreement, and the indemnification and hold harmless provision in the Agreement. Once the Parties receive written notice from Caltrans that it has opted to withdraw from this Agreement, the written withdrawal date in the notice, or if such withdrawal date is not listed, thirty (30) calendar days after the date of notice, this Agreement shall automatically revert to the language of the Agreement before Caltrans joined—although all amendment language adopted after Caltrans joined the Agreement that does not specifically relate to Caltrans joining the Agreement shall remain valid—without any further action by the Parties.

10. If Caltrans joins the Agreement, any Party intending to enter onto a Caltrans right of way to effectuate the terms of this Agreement shall first make a written request to Caltrans, identifying the site location, extent of access by persons (and equipment, if any), dates and times of entry, as well as an explanation of the purpose of that entry. Caltrans shall thereafter determine, within ten (10) working days, if that entry will be allowed without a formal Encroachment Permit issued by the District Permit Engineer as an authorized presence of non-Caltrans parties not interfering with or threatening the safety of the traveling public or the integrity of the Caltrans infrastructure. In such case, Caltrans shall condition that right of entry on the accompaniment of a Caltrans representative who shall be empowered to restrict or limit the access of those permittees, as deemed necessary, at the sole discretion of Caltrans. Where adverse impacts to traffic or the traveled way can be anticipated by Caltrans, Caltrans may require the requesting Party to submit a formal Encroachment Permit application, to be filed and completed together with Traffic Control Plans when necessary (which must be prepared by or under the supervision of a traffic engineer licensed in the State of California) with the District Permit Engineer. An Encroachment Permit may require as much as six (6) weeks to be issued depending upon the extent of coordination and development of traffic controls required for that access. Caltrans will endeavor, in good faith, to satisfy all requests for access as promptly as possible.
11. Monitoring data collected will remain in draft form until finalized and submitted to the RWQCB. Prior to such disclosure, no Party may share the monitoring data generated from the Program with members of the public without first notifying the Lead Agency, unless so required by law or court order.
12. Waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by any Party of any payment constitute or be construed as a waiver by that Party of any breach of covenant or any default that may then exist on the part of any other Party, and the making of any such payment by a Party shall

in no way impair or prejudice any right or remedy available to that Party or any other Party with regard to such breach or default.

13. This Agreement, including any other documents incorporated herein by specific reference, constitutes the entire and integrated agreement of the Parties regarding the subject matter described herein. This Agreement supersedes all prior oral or written communications, negotiations, representations, agreements and promises. This Agreement may not be modified or amended, nor any provision or breach waived, except in a writing signed by all Parties which expressly refers to this Agreement.
14. No Party shall assign or transfer any interest in this Agreement or any part thereof, whether by assignment or novation, without every other Party's prior written consent. Any purported assignment without written consent shall be null, void, and of no effect.
15. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules. Venue for any such action relating to the Agreement shall be in the Ventura County Superior Court.
16. Any person executing this Agreement on behalf of a Party warrants and represents that he or she has the authority to execute this Agreement on behalf of that Party and has the authority to bind that Party to the performance of its obligations hereunder.
17. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.
18. Any notice pursuant to this Agreement shall be made by certified mail or registered letter, return receipt requested, or by overnight courier to all Parties at the following addresses:

To the Lead Agency —

Ewelina Mutkowska
County of Ventura
800 S Victoria Avenue
Ventura, California 93009-1610
Phone: (805) 645-1382

To the City of Santa Paula —

Brian Yanez
City of Santa Paula
PO Box 569
Santa Paula, CA 93061-0569
Phone (805) 933-4212

To the City of Oxnard —

Daniel Rydberg
City of Oxnard
305 West Third Street
Oxnard, CA 93030

To the City of Fillmore —

City Manager & City Engineer
City of Fillmore
250 Central Avenue
Fillmore, CA 93015
Phone: (805) 524-1500 x. 114

To the City of San Buenaventura —

Joe Yahner
CITY OF SAN BUENAVENTURA
PO Box 99
Ventura, CA 93002-0099
Phone: (805) 652-4558

**To California Department of
Transportation (if elects to join in the
future)**

District 07
Design Division, Storm Water Unit

Phone: (805) 385-8280

Alberto A. Angelini
100 South Main Street, Suite 100, MS 13
Los Angeles, Ca 90012

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Signature Page

By the authorized signatures below the **COUNTY OF VENTURA** agrees to the Agreement and agrees to provide for equal cost sharing for the next five years of the required SCR Bacteria TMDL monitoring and reporting.

Signature: _____
Jeff Pratt, Ventura County Public Works
Agency Director

Date: _____

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By the authorized signatures below the **CITY OF FILLMORE** agrees to the Agreement and agrees to provide for equal cost sharing for the next five years of the required SCR Bacteria TMDL monitoring and reporting.

Signature: _____ Date: _____
Diane McCall, Mayor

ATTEST:

Diana Impeartrice, Deputy City Clerk

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By the authorized signatures below the **CITY OF OXNARD** agrees to the Agreement and agrees to provide for equal cost sharing for the next five years of the required SCR Bacteria TMDL monitoring and reporting.

Tim Flynn, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Stephen Fischer, City Attorney

APPROVED AS TO INSURANCE:

Mike More, Risk Manager

APPROVED AS TO CONTENT:

Daniel Rydberg, Department Manager

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By the authorized signatures below the **CITY OF SANTA PAULA** agrees to the Agreement and agrees to provide for equal cost sharing for the next five years of the required SCR Bacteria TMDL monitoring and reporting.

Signature: _____
 Brian Yanez, Public Works Director

Date: _____

ATTEST:

Judy Rice, City Clerk

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By the authorized signatures below the **CITY OF SAN BUENAVENTURA** agrees to the Agreement and agrees to provide for equal cost sharing for the next five years of the required SCR Bacteria TMDL monitoring and reporting.

Signature: _____ Date: _____
Erik Nasarenko, Mayor

ATTEST:

Antoinette M. Mann, City Clerk

Exhibit A

Cost Sharing Distribution Table

Monitoring and Reporting Period: October 11, 2016 - October 10, 2017		Contract Amount
12-month Monitoring and Reporting estimate		\$ 25,417.84
Contingency (20%)		\$ 5,083.57
County of Ventura 5% Administrative Fee		\$ 1,525.07
TOTAL		\$ 32,026.48

MOA Parties	Contribution Amount
County of Ventura	\$ 6,405.30
CITY of San Buenaventura	\$ 6,405.30
City of Fillmore	\$ 6,405.30
City of Santa Paula	\$ 6,405.30
City of Oxnard	\$ 6,405.30
Total	\$ 32,026.48

Future Adjusted Cost Sharing Distribution Table (if Caltrans Joins Agreement)

Monitoring and Reporting Period: <i>To Be Determined</i>		Contract Amount
12-month Monitoring and Reporting estimate		\$ 25,417.84
Contingency (20%)		\$ 5,083.57
County of Ventura 5% Administrative Fee		\$ 1,525.07
TOTAL		\$ 32,026.48

MOA Parties	Contribution Amount
County of Ventura	\$ 5,337.75
CITY of San Buenaventura	\$ 5,337.75
City of Fillmore	\$ 5,337.75
City of Santa Paula	\$ 5,337.75
City of Oxnard	\$ 5,337.75
Caltrans	\$ 5,337.75
Total	\$ 32,026.48

Exhibit B

Notice to All Parties of Caltrans' Election to Join the Agreement

Date of Notice: _____

Pursuant to Section 5 of the agreement titled "Memorandum of Agreement among City of Fillmore, City of Oxnard, City of Santa Paula, CITY OF SAN BUENAVENTURA, and County of Ventura (Parties) to Provide Equal Cost Sharing for Santa Clara River Bacteria Monitoring and Reporting Program," entered into effect on October 5, 2016 (Agreement), which is incorporated herein by this reference, the California Department of Transportation (Caltrans) elects to join the Agreement. In joining the Agreement, Caltrans agrees to all provisions of the Agreement, including all of the benefits and burdens bestowed upon Caltrans due to the provisions of the Agreement, and Caltrans asserts that it shall comply with all provisions in the Agreement. Thus, Caltrans shall become a party to the Agreement such that the term "Party" used therein shall apply to Caltrans and the term "Parties" used therein shall include Caltrans.

The date whereby Caltrans shall join the Agreement, which in any case shall be at least fifteen (15) calendar days after the date of notice listed above, is: _____.

To effectuate this election, Caltrans shall provide this Notice to all other parties to the Agreement in the manner required by Section 18 of the Agreement.

By _____
District Director

Date: _____

APPROVED AS TO FORM AND PROCEDURE:

By _____
Attorney

CERTIFIED AS TO FUNDS:

By _____
District Budget Manager

CERTIFIED AS TO FINANCIAL TERMS AND CONDITIONS:

By _____
Accounting Administrator

Exhibit C

Notice to All Parties of Caltrans' Election to Withdraw from the Agreement

Date of Notice: _____

Pursuant to Section 11 of the agreement titled "Memorandum of Agreement among City of Fillmore, City of Oxnard, City of Santa Paula, CITY OF SAN BUENAVENTURA, and County of Ventura (Parties) to Provide Equal Cost Sharing for Santa Clara River Bacteria Monitoring and Reporting Program," entered into effect on October 5, 2016 (Agreement), which is incorporated herein by this reference, the California Department of Transportation (Caltrans) elects to withdraw from the Agreement. In withdrawing from the Agreement, Caltrans shall remain responsible for its share of liability, if any, incurred while participating in this Agreement.

The date whereby Caltrans withdraws from the Agreement, which in any case shall be at least fifteen (15) calendar days after the date of notice listed above, is: _____.

To effectuate this election, Caltrans shall provide this Notice to all other parties to the Agreement in the manner required by Section 18 of the Agreement.

By _____
District Director

Date: _____

APPROVED AS TO FORM AND PROCEDURE:

By _____
Attorney

CERTIFIED AS TO FUNDS:

By _____
District Budget Manager

CERTIFIED AS TO FINANCIAL TERMS AND CONDITIONS:

By _____
Accounting Administrator