

Attachment B

MEMORANDUM OF UNDERSTANDING

BETWEEN THE CITIES OF PASADENA AND SOUTH PASADENA REGARDING THE ADMINISTRATION AND COST SHARING AMONG THE PARTIES RELATED TO THE SAN RAFAEL TREATMENT WETLANDS PROJECT AND THE USE OF PROPOSITION 68 GRANT ARROYO SECO SUBPROGRAM FUNDING

This Memorandum of Understanding (MOU) is made and entered into as of the date of the last signature set forth below by and between the City of Pasadena (PASADENA), a municipal corporation and the City of South Pasadena (SOUTH PASADENA), a municipal corporation. Collectively, these entities shall be known herein as PARTIES or individually as PARTY.

Recitals

WHEREAS, on June 5, 2018, voters approved Proposition 68, via Senate Bill 5 (DeLeon, Chapter 852, statutes of 2017); funds for the Urban Counties Per Capita Program were appropriated via Chapter 23, statutes of 2019 (Prop 68 funds); and

WHEREAS, a portion of the Prop 68 funds have been set aside for the Arroyo Seco subprogram in the amount of \$3,500,000 in grant funding for the purpose of Arroyo Seco water reuse and natural stream restoration projects, of which no more than \$350,000 may be used for planning and monitoring (Chapter 23, Statutes of 2019, 3790-101-6088 (2)2(c)); and

WHEREAS, applicants for Prop 68 grant funding for the Arroyo Seco subprogram with overlapping or adjoining territory are encouraged to partner and to submit joint application(s) with respect to combined project(s); and

WHEREAS, the PARTIES wish to partner to submit a joint application for the \$3,500,000 in grant funding available in the Arroyo Seco subprogram to divert a portion of runoff from the Arroyo Seco and to construct natural wetlands and related infrastructure to passively treat, store, and re-use the water (the "San Rafael Treatment Wetlands Project" or "Project"). The resulting Project will be open to the public and maintained by the PARTIES for a minimum of 30 years, as required by the Prop 68 grant funding requirements.

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

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

Section 2. Purpose. The purpose of this MOU is to set forth the obligations and responsibilities of each PARTY with respect to the Project, including the grant application, grant funding allocations and local match funds contributions, and Project construction, management and maintenance.

Section 3. Cooperation. The PARTIES shall fully cooperate with one another to attain the purposes of this MOU.

Section 4. Term. This MOU shall become effective to each PARTY on the date that PARTY signs this MOU, and shall remain in effect until the Project is completed and the PARTIES have received final payment of their allocated pro-rata share, unless earlier terminated as set forth in Section 10, below.

Section 5. Project Scope. The Project Scope consists of diverting a portion of runoff from the Arroyo Seco (the San Rafael Creek) and constructing natural functioning wetlands and related infrastructure to passively treat, store, and re-use the water. The Site Diagram of the Project and its location is attached hereto as Exhibit A.

Section 6. Pasadena's Obligations.

- a. **Application.** To prepare and submit the Grant Application to the California Department of Parks and Recreation ("STATE" or "GRANTOR") for the Project on behalf of the PARTIES.
- b. **Lead Agency.** To act as the lead agency for the Project, including preparing the necessary environmental document(s) in compliance with the California Environmental Quality Act (Public Resources Code, §21000, et seq., Title 14, California Code of Regulations, §15000 et seq.).
- c. **Contractor.** To select, without objection from South Pasadena, and hire a Contractor by a competitive bidding process to perform the Project Scope of Work, in an amount not to exceed \$4,375,000. In the event South Pasadena objects to the Contractor selected by Pasadena, the PARTIES agree to work in good faith to resolve any differences. If the PARTIES are unable to reach agreement, Pasadena shall have the right to select a Contractor notwithstanding South Pasadena's objection.
- d. **Construction Manager.** To select, without objection from South Pasadena, and hire a Construction Manager for the oversight and supervision of the Project work. In the event South Pasadena objects to the Construction Manager selected by Pasadena, the PARTIES agree to work in good faith to resolve any differences. If the PARTIES are unable to reach agreement, Pasadena shall have the right to select a Construction Manager notwithstanding South Pasadena's objection.

- e. **Contingency.** To notify the City of South Pasadena if actual expenditures to complete the Project are anticipated to exceed the current estimated cost of \$4,375,000.
- f. **Report.** To provide the City of South Pasadena with an electronic copy of the draft and final Grant submittals as submitted to the STATE.
- g. **Accounting.** To provide an accounting upon termination of this MOU. At the completion of the accounting, Pasadena shall return to South Pasadena any unused funds deposited by South Pasadena with Pasadena.
- h. **Cost Share and Grant Administration.** To contribute 50% of the total costs of the Project, including its share of the grant funds, local match and any additional funding, including by not limited to the cost of CEQA analysis, needed to complete the Project. Pasadena shall be responsible for the administration of the grant proceeds.

Section 7. South Pasadena's Obligations.

- a. **Permit.** To work with the CONTRACTOR to obtain all necessary permits for installation of permanent or temporary infrastructure located in the City of South Pasadena.
- b. **Grant Submission Documentation.** To timely submit to the City of Pasadena, if requested, all documents, reports, data, or other information required to prepare and submit the Grant Application.
- c. **Cost Share and Grant Administration.** To contribute 50% of the total costs of the Project, including its 50% share of the grant proceeds, its 50% share of the local match and its 50% share of any additional funding needed to complete the Project.

Section 8. Joint Obligations.

- a. **Payment.** To deposit the grant funds, local match and additional funding necessary to complete the Project into a Project funding account, to be administered by Pasadena, as set forth in Section 6 above. The total projected cost of the Project is currently \$4,375,000. Each PARTY's pro-rata share, over and above the anticipated grant funds, is therefore one-half of \$875,000, or \$437,500. This cost estimate has been agreed upon by the PARTIES and is subject to change only in the event of unforeseen challenges in the field not included in the Project Scope of Work. Any such changes proposed to the PARTIES' proportional share is subject to funding appropriation by their city councils.
- b. **Documentation.** To make a good faith effort to cooperate with one another to achieve the purposes of this MOU by providing all requested information and documentation in their possession and available for release deemed necessary to comply with the terms of the Grant or to complete the Project.

- c. **Records.** Each PARTY will retain all records and documents in its possession pertaining to the Grant for a period of five (5) years following termination of this MOU.
- d. **Access.** Each PARTY will allow reasonable access and entry to the CONTRACTOR, on an as needed basis during the term of this MOU, to the PARTY'S facilities to achieve the purposes of this MOU, provided, however, that prior to entering any of the PARTY'S facilities, the CONTRACTOR shall obtain all necessary permits and execute a Right-of-Entry Agreement and provide written notice 72 hours in advance of entry from the applicable PARTY.
- e. **Compliance with CEQA.** Each PARTY shall contribute 50% of the cost of analysis and preparation of resulting environmental documentation in compliance with the California Environmental Quality Act (CEQA).
- f. **Maintenance.** Each PARTY shall maintain the Project area, once complete, for public use for a minimum 30 year period. The PARTIES may coordinate their maintenance efforts (each maintaining the portion of the Project area which falls within its territorial jurisdiction) through a separate cooperative maintenance agreement, as needed.
- g. **Deed Restriction.** Each PARTY shall record a deed restriction over the portion of the Project area which falls within their territorial jurisdiction for a minimum 30-year period, providing for maintenance of the completed Project area and access for public use.

Section 9. Indemnification

- a. Each PARTY shall indemnify, defend, and hold harmless each other PARTY, including its 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 for that PARTY'S own negligence or willful misconduct. Notwithstanding the forgoing provision, each PARTY agrees to contribute 50% of the cost to defense against any third-party claim that either PARTY has violated CEQA regarding the processing and approval of this Project.
- b. In light 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 in Section 895 of said Code), each of the PARTIES hereto, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees, by law for injury caused by any act or omission occurring in the performance of this MOU to the same extent such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each

PARTY indemnifies, defends, and holds harmless each other PARTY for any liability, cost, or expense that may be imposed upon such other PARTY solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

Section 10. Termination and Withdrawal

- a. This MOU may be terminated upon the express written agreement of the PARTIES. If this MOU is terminated, then the PARTIES must agree on the equitable repayment or reallocation of the remaining grant funds, if any, and on the payment of invoices due at the time of termination.
- b. If a PARTY wishes to withdraw from this MOU for any reason, that PARTY must give the other PARTY at least 30 days prior written notice thereof. The withdrawing PARTY shall be responsible for its share of the Project costs. The effective date of withdrawal shall be the 6th day after written notice of the PARTY'S intent to withdraw is received.

Section 11. General Provisions

- a. **Notices.** Any notices, requests, or other communication required or permitted hereunder shall be in writing and shall be delivered to the representatives of the PARTIES at the addresses set forth below. The PARTIES shall promptly notify each other of any change of contact information. 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 (3rd) business day following mailing by registered or certified mail (return receipt requested).

City of Pasadena
Kris Markarian, PE
City Engineer
Public Works Department
100 North Garfield Avenue
Pasadena, CA 91101
Telephone: (626) 744-4695

City of South Pasadena
Julian Lee, PE
Deputy Public Works Director
Public Works Department
1414 Mission Street
South Pasadena, CA 91030
Telephone: (626) 403-7240
Facsimile: (626) 403-7241

- b. **Relationship of the PARTIES.** The PARTIES are, and shall at all times remain 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 any other 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.
- c. **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 PARTY.

- d. **Amendment.** The terms and provisions of this MOU may not be amended, modified, or waived, except by an instrument in writing signed by the PARTIES.
- e. **Law to Govern.** This MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
- f. **Severability.** If any provision of this MOU is determined by any court to be invalid, illegal, or unenforceable to any extent, then the remainder of this MOU will not be affected, and this MOU will be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.
- g. **Entire Agreement.** This MOU constitutes the entire agreement of the PARTIES with respect to the subject matter hereof.
- h. **Waiver.** Waiver by either 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 either PARTY of 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.
- i. **Counterparts.** This MOU may be executed in 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 counterpart shall have been delivered to the other PARTY of the PARTIES to this MOU.
- j. All PARTIES have been represented by 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 and shall be rectified by amending this MOU as described in Section 10(e).

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:

City of South Pasadena

City of Pasadena

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

By: _____
Evelyn G. Zneimer, City Clerk

Date: _____

Approved as to form:

Approved as to form:
Michele Beal Bagneris
Pasadena City Attorney

By: _____
Teresa L. Highsmith
City Attorney, South Pasadena

By: _____
Deborah A. Wordham
Deputy City Attorney, Pasadena

Date: _____

Date: _____