



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Jim A. Arndt, Director of Public Works
Carmen Zarate, Senior Management Analyst

DATE: October 21, 2008

SUBJECT: Approve Memorandum of Agreement for Santa Monica Bay Beaches Bacteria TMDL Shoreline Monitoring (\$34,320)

RECOMMENDATION:

Staff recommends that the City Council pass a motion to approve the attached memorandum of agreement between the City of Manhattan Beach and the City of Redondo Beach as contracting agent for responsible jurisdictions and agencies represented in Jurisdictional Groups Five and Six to conduct shoreline monitoring from 11/01/08 to 10/31/11 as required by the Santa Monica Bay Beaches Bacteria Total Maximum Daily Load (SMBBB TMDL) (\$34,320).

FISCAL IMPLICATION:

Sufficient funds were budgeted for this expenditure and are available in the fiscal year 2008-2009 Public Works Storm Drain Maintenance operating budget.

BACKGROUND:

In addition to the requirements of the National Pollutant Discharge Elimination System permit, the City of Manhattan Beach and other permittees are required to implement programs and treatment systems to meet rigorous receiving-water limits known as Total Maximum Daily Loads or TMDLs. The U.S. Federal Regulations under the Clean Water Act (CWA) of 1972 require States to develop/modify a 303 (d) list that identifies impaired water bodies every two years. This list is presented to and approved by the U.S. Environmental Protection Agency (EPA). The list specifies portions of the water bodies that are impaired and the pollutant causing impairment, i.e. trash, bacteria, heavy metals, nutrients, sediment, suspended solids, petroleum products and pesticides. A water body is considered impaired if an identified beneficial use is adversely affected by the present level of a particular pollutant. These TMDLs are required for as many as 90 water body-pollutant combinations throughout the Los Angeles region.

The EPA is required to establish TMDLs for each pollutant that impairs a water body so that the beneficial use will not be adversely impacted. In 1999, litigation between the EPA and several environmental groups was settled with a consent decree that required the EPA to approve 58 TMDLs in 13 years. The Santa Monica Bay Beaches Bacteria (SMBBB TMDL) was one of the

first such TMDL to be developed and is the TMDL currently in effect for the City of Manhattan Beach.

Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL)

The SMBBB TMDL developed and approved by the Los Angeles Regional Water Quality Control Board (RWQCB) divided this TMDL into two parts to address two weather conditions (dry and wet weather). In January 2002, the RWQCB approved the “Dry Weather” Bacteria TMDL, and in December 2002, it approved the “Wet Weather” Bacteria TMDL. After review and approval by the EPA, both TMDLs became effective on July 15, 2003. The SMBBB TMDL contained two immediate actions to be taken by the affected agencies. The first was to develop a Monitoring Plan that would be used to determine compliance and it is the provision for ongoing implementation of the Monitoring Plan which is the subject of this Memorandum of Agreement. The second action was to develop an Implementation Plan that would provide a road map to achieve compliance.

The SMBBB TMDL identifies several “Jurisdictional Groups” within the Santa Monica Bay watershed. Each Jurisdictional Group represents what is called a “sub-watershed” area within the larger Santa Monica Bay Watershed. Each Jurisdictional Group is assigned a “Primary Jurisdiction,” defined to be the jurisdiction comprising greater than fifty percent (50%) of the Jurisdictional Group’s sub-watershed area. The City of Manhattan Beach is the Primary Jurisdiction for Jurisdictional Group Five (J5). El Segundo, Hermosa Beach, Los Angeles County and Caltrans are “additional responsible jurisdictions and agencies” in J5 (see attached J5 map). The City of Redondo Beach is the Primary Jurisdiction for Jurisdictional Group Six (J6), and Hermosa Beach, Manhattan Beach, Torrance, County of Los Angeles, and Caltrans are “additional responsible jurisdictions and agencies” (see attached J6 map).

Monitoring Plan

The City of Los Angeles, with other affected agencies, in collaboration with the RWQCB and several environmental groups, worked to develop a Coordinated Shoreline Monitoring Plan (CSMP). This was submitted by the November 12, 2003 deadline. The RWQCB reviewed the plan and approved it on April 23, 2004. Monitoring in accordance with the CSMP began November 1, 2004.

The CSMP identified 68 monitoring sites along the affected shoreline. Eleven (11) of the 68 sites are located within the boundaries of Group 5 (five sites) and Group 6 (six sites). The four cities in the two groups determined it would be most economical to work together in complying with this requirement. Four of the 11 sites are being monitored by the LA County Department of Health Services (DHS) as part of their shoreline monitoring program at no cost to local agencies. Monitoring of the remaining seven monitoring sites is the joint responsibility of the Jurisdictional Groups 5 and 6 agencies.

In 2004, two alternatives for monitoring the remaining seven sites were evaluated: either retaining the services of the Environmental Monitoring Division (EMD) based at the City of Los Angeles Hyperion Treatment Plant, or a qualified private laboratory. Based on the evaluation of cost of the two alternatives, the private laboratory option was selected.

Michelson Laboratory was retained to provide the monitoring and has provided weekly field

sampling and laboratory analysis for the three types of required indicator bacteria along with the field observations of monitoring site conditions during the last four years with excellent service. The four agencies agreed the services of Michelson Laboratory should continue to be retained.

DISCUSSION:

In October 2004 four cities, including Manhattan Beach, Hermosa Beach, Torrance and Redondo Beach, agreed to jointly monitor water quality at seven shoreline locations between the north boundary of Manhattan Beach and the south boundary of Torrance in compliance with the Santa Monica Bay Beaches Bacteria TMDL Coordinated Shoreline Monitoring Plan (CSMP).

The City of Redondo Beach took the lead in contracting with the private lab. Redondo Beach entered into an agreement with Michelson Laboratory to perform the required monitoring. Memoranda of agreements (MOAs) having identical language were established between the City of Redondo Beach and each of the other agencies to provide for sharing of monitoring costs.

The multiple agreements between the agencies and the laboratory contract each had a three-year term, 11/01/04 through 10/31/07 with an option to extend one additional year. The extended MOA and consultant agreements are set to expire on October 31, 2008.

The new MOA and consultant agreement will continue the monitoring activity for three more years. The monitoring costs are proportionally distributed based on land area from each agency that drains to each of the monitoring sites. The City of Manhattan Beach's share of the first year's costs is \$11,440. The agreements and consultant contract each have a built-in Consumer Price Index (CPI) annual increase over the term of the agreement, with the total not-to-exceed cost to the City of \$34,320. The City of Manhattan Beach shall reimburse the City of Redondo Beach annually to cover the compliance and accelerated monitoring services performed by Redondo Beach.

The MOA has been approved as to form by the City Attorney. Redondo Beach and Torrance have already approved their MOAs. Hermosa Beach City Attorney has approved the MOA as to form and the MOA is scheduled to be approved by their City Council this month.

CONCLUSION

Staff recommends that the City Council pass a motion to approve the attached memorandum of agreement between the City of Manhattan Beach and the City of Redondo Beach as contracting agency to conduct shoreline monitoring from 11/01/08 to 10/31/11 as required by the Santa Monica Bay Beaches Bacteria Total Maximum Daily Load (SMBBB TMDL) (\$34,320).

ALTERNATIVES

The alternatives to the staff recommendation include:

- A) Approve the memorandum of agreement between the City of Manhattan Beach and the City of Redondo Beach as contracting agency for the agencies represented in Jurisdictional Groups Five and Six of the Santa Monica Bay Beaches Bacteria TMDL (\$34,320).
- B) Provide other direction

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Attachments: A. MOA for the SMBBB TMDL Shoreline Monitoring
B. J5 and J6 Maps

AGREEMENT

BETWEEN

CITY OF REDONDO BEACH AND CITY OF MANHATTAN BEACH

FOR

**SANTA MONICA BAY BEACHES BACTERIA TMDL
SHORELINE WATER QUALITY MONITORING**

AGREEMENT

**SANTA MONICA BAY BEACHES BACTERIA TMDLs
SHORELINE WATER QUALITY MONITORING**

This AGREEMENT is made and entered into by and between the CITY OF REDONDO BEACH (“Redondo Beach”) and CITY OF MANHATTAN BEACH (“Manhattan Beach”) collectively referred to herein as the “Parties”.

WHEREAS, on January 24, 2002, the California Regional Water Quality Control Board, Los Angeles Region (“RWQCB”) adopted Resolution No. 02-004 (“Resolution 02-004”), establishing the limit for the Total Maximum Daily Loads for bacteria during dry weather for Santa Monica Bay Beaches, a true and correct copy of which can be located on the internet at www.swrcb.ca.gov/rwqcb4/html/; and

WHEREAS, on December 12, 2003, the RWQCB adopted Resolution No. 2002-022 (“Resolution 2002-022”), establishing the limit for the Total Maximum Daily Loads for bacteria during wet weather for Santa Monica Bay Beaches, a true and correct copy of which can be located on the internet at www.swrcb.ca.gov/rwqcb4/html/; and

WHEREAS, Resolutions 02-004 and Resolution 2002-022 are jointly referred to herein as “Bacteria TMDLs”; and

WHEREAS, the Bacteria TMDLs became effective on July 15, 2003; and

WHEREAS, the Bacteria TMDLs address documented bacteriological water quality impairments at 44 beaches from the Los Angeles/Ventura County line (to the northwest) to Outer Cabrillo Beach (just south of the Palos Verdes Peninsula); and

WHEREAS, the Bacteria TMDLs provide for a Coordinated Shoreline Monitoring Plan (CSMP) to be submitted to RWQCB for approval; and

WHEREAS, on April 28, 2004, RWQCB approved the CSMP submitted by the Counties of Los Angeles and Ventura, Caltrans, California Department of Parks and Recreation, Cities of Los Angeles, Calabasas, Santa Monica, El Segundo, Rancho Palos Verdes, Palos Verdes Estates, Redondo Beach, Rolling Hills, Rolling Hills Estates, Manhattan Beach, Hermosa Beach, Culver City, West Hollywood, Beverly Hills, Agoura Hills, Thousand Oaks, Westlake Village, Simi Valley, Hidden Hills, Inglewood, and Torrance; and

WHEREAS, the cities of Manhattan Beach, Hermosa Beach, Redondo Beach and Torrance (collectively herein referred to as “Municipalities”, or individually as Municipality) wished to work cooperatively to implement the requirements of the CSMP

WHEREAS, the Parties entered into an agreement on November 1, 2004 cooperatively establish a monitoring program that is consistent with the approved CSMP and consistent with the provisions of the Bacteria TMDLs while recognizing the fact that the Bacteria TMDLs have not been incorporated into the NPDES Permit; and

WHEREAS, the aforementioned agreement was extended by mutual agreement to October 31, 2007; and

WHEREAS, Redondo Beach retained the service of a private laboratory, over the four years of the aforementioned agreement, with the expertise, qualifications and equipment to perform monitoring services consistent with the CSMP (hereinafter "Monitoring Services"); and

WHEREAS, the Bacteria TMDLs was incorporated into the National Pollutant Discharge Elimination System Permit regarding Waste Discharge Requirements For Municipal Stormwater and Urban Runoff Discharges within the County of Los Angeles, and the Incorporated Cities therein, except the City of Long Beach, by Order R4-2006-0074 ("NPDES Permit") in the manner that made the Bacteria TMDLs legally enforceable; and

WHEREAS, the NPDES Permit specifies that the CSMP is to be used to determine compliance with the Receiving Water Limitations as specified in Part 2 of the NPDES Permit; and

WHEREAS, the Parties intend to enter into a new agreement to continue with the aforementioned Monitoring Services; and

WHEREAS, Redondo Beach will continue to retain the service of a private laboratory with the expertise, qualifications and equipment to perform Monitoring Services; and

WHEREAS, Manhattan Beach is willing to pay Redondo Beach to perform Monitoring Services on their behalf at locations identified in Exhibit A and Redondo Beach is willing to provide, perform and to be reimbursed for such Monitoring Services as indicated in Exhibit B; and

NOW, THEREFORE, the Parties do hereby agree as follows:

AGREEMENT

ARTICLE I – Purpose of AGREEMENT

- 1. Purpose of AGREEMENT** – The purpose of this AGREEMENT is to memorialize the Parties' willingness to coordinate the payment and performance of Monitoring Services that are consistent with the provisions of the CSMP and the Bacteria TMDLs.
- 2. Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan (CSMP)** – The Bacteria TMDLs provide for a CSMP to be submitted to the RWQCB for approval by November 12, 2003. The CSMP identifies all the monitoring

locations, the type of monitoring and the frequency of monitoring. RWQCB approved the CSMP on April 28, 2004, the approved CSMP can be located on the internet at <http://www.ladpw.org/wmd/NPDES/beachplan.cfm>.

- 3. NPDES Permit Compliance** – The parties acknowledge that the NPDES Permit specifies that the CSMP is to be used to determine compliance with the Receiving Water Limitations of the NPDES Permit. Manhattan Beach agrees that the data collected during the execution of the Monitoring Service can be used by the RWQCB for compliance determination

ARTICLE II– Responsibilities of Redondo Beach

- 1. Monitoring** – Redondo Beach will retain the services of a private laboratory to perform water quality monitoring in accordance with the CSMP at locations as indicated in Exhibit A on behalf of Manhattan Beach. Performance of Monitoring Services by Redondo Beach at locations listed in Exhibit A is expressly conditioned upon all Municipalities entering into agreements with Redondo Beach for the performance of Monitoring Services. Redondo Beach will not be obligated to perform Monitoring Services, and Manhattan Beach will not be obligated to pay Redondo Beach for such Monitoring Services until said condition is satisfied. If Redondo Beach does not obtain similar agreements with all Municipalities A to perform Monitoring Services at locations by October 31, 2008, Manhattan Beach may seek to have the Monitoring Services performed by another entity.
- 2. Cost per monitoring location** – Redondo Beach, in consultation with the Municipalities, established each Municipality's share of cost for the Monitoring Services. The cost allocation percentages among Municipalities and the estimated cost for each monitoring location are shown in Exhibit A.
- 3. Reports** – Redondo Beach will submit monitoring reports to RWQCB each month and forward a copy to Manhattan Beach as described in the CSMP. Manhattan Beach acknowledges but does not waive any objections to such use, that the data contained in said report could be used by the RWQCB in compliance Bacteria TMDL and NPDES Permit.
- 4. Exceedances** – Redondo Beach will conduct accelerated monitoring according to Los Angeles County Department of Health Services protocol (existing protocol is to conduct accelerated monitoring between April 1 and October 31 only) at each location where exceedance is detected. Exceedance will be determined according to the CSMP. Redondo Beach will provide additional accelerated monitoring at the request of Manhattan Beach. This AGREEMENT does not include any research or investigation of the reason(s) or source(s) that caused the exceedance.

ARTICLE III – Responsibilities of Manhattan Beach

1. **Documentations** – Manhattan Beach agrees to provide all readily available information and documentation to Redondo Beach, at no cost to Redondo Beach, that is deemed by Manhattan Beach and Redondo Beach to be reasonably necessary to perform the Monitoring Services.
2. **Grant of Access Rights** – During the term of this AGREEMENT, Manhattan Beach hereby grants to Redondo Beach and/or representative of the private laboratory the right of access and entry to storm drains and beaches under the ownership and control of Manhattan Beach at all reasonable times for the purpose of performing the duties and obligations described in this AGREEMENT.
3. **Cost Reimbursement** – Manhattan Beach agrees to reimburse Redondo Beach for the amount as shown in Exhibit B, to this AGREEMENT annually for the compliance monitoring and accelerated monitoring.

ARTICLE IV – Invoice and Payment

1. **Annual Payment** – Manhattan Beach shall reimburse Redondo Beach an amount as shown in Exhibit B annually to cover the compliance and accelerated monitoring services performed by Redondo Beach. The Annual Payment shall be increased annually by the percentage change in the Consumer Price Index (CPI) as calculated by the United States Department of Labor, Bureau of Labor Statistics for the Greater Los Angeles Area, All Items. The CPI as of July 2008 shall be used as the basis. The accelerated monitoring cost shown in Exhibit A is an estimate only; the actual cost of the accelerated monitoring will be reconciled with the next Annual Payment. Notwithstanding the foregoing, the Annual Payment shall be revised only upon mutual consent of both parties in writing.
4. **Invoice** – Redondo Beach will invoice Manhattan Beach for the annual payment in April of each rain year (for the purpose of this agree an example rain year: the 2008 rain year begins on November 1, 2008 and ends October 31, 2009), beginning April 2009 for the 2008 rain year. Manhattan Beach shall pay the invoice within 60 days of its receipt from Redondo Beach.
3. **Late Payment Penalty** – Any payment that is late shall be subject to interest on the original amount due from the date that the payment first became due. The interest rate shall be equal to the Prime Rate in effect on the 60th day after receipt of the invoice by Manhattan Beach plus one percent. The rate shall, nevertheless, not exceed the maximum allowed by law.

ARTICLE V – Term of AGREEMENT

1. The term of this AGREEMENT shall be November 1, 2008 to midnight October 31, 2011 unless earlier terminated or extended. During the term of this AGREEMENT, either Party may demand that the other Party negotiate, in good faith, modifications to the AGREEMENT that may be reasonably necessary because of any of the following changed circumstances:
 - A. There is a material change in the regulatory framework for stormwater and urban runoffs; or
 - B. There is a proposed change, either addition or deletion of monitoring locations, tests and frequency of tests; or
 - C. There is a material change in the cost of providing monitoring in the approved locations
2. This AGREEMENT shall continue on a month to month basis after the expiration date as stated in Article V, Section 1 above until either Manhattan Beach requests Redondo Beach in writing to cease the Monitoring Services on behalf of Manhattan Beach or a new AGREEMENT is executed for employing Redondo Beach to perform Monitoring Services on behalf of Manhattan Beach, but not to exceed twelve (12) months. The cost for the monthly monitoring shall be one twelfth of the annual cost.

ARTICLE VI – General Provisions

1. **Notices** – Any notices, bills, invoices, or reports relating to this AGREEMENT, 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 addresses set forth below. Parties shall promptly notify each other of any change of contact information provided below. Written notice shall include notice delivered via email. 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 business day following deposit in the United States mail, postage prepaid to the addresses set forth below:

City of Redondo Beach:

City of Redondo Beach
Engineering and Building Services
Department
415 Diamond Street
Redondo Beach CA 90013
Attention: City Engineer

City of Manhattan Beach:

City of Manhattan Beach
Department of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266
Attention: Jim Arndt

2. **Relationship of the Parties** – The Parties are and shall remain at all times as to each other, wholly independent entities. No Party to this AGREEMENT shall have power to incur any debt, obligation, or liability on behalf of another Party or otherwise act as an agent of another Party except as expressly provided to the contrary by this AGREEMENT.
3. **Cooperation, Further Acts** – Parties shall cooperate fully with one another to attain the purposes of this AGREEMENT.
4. **Amendments** – All amendments must be in writing, approved and executed by both Parties. The authorized signatory of this AGREEMENT is authorized to execute any amendments that do not extend this AGREEMENT by more than twelve months and/or increase in cost for less than \$ 5,000.
5. **Indemnification** – Each Party shall protect, indemnify, defend and hold harmless each of the other Parties, including officers, elected and appointed officials, agents and employees from and against any and all claims demands, causes of action, lawsuits (whether at law, equity or both), proceeding, liabilities, losses, damages, expenses, costs (including without limitation reasonable attorney’s fees and costs and expert witness fees), judgments, penalties and liens of every nature arising or claimed to arise, directly or indirectly, from or connected with its acts arising from and/or related to this AGREEMENT.
6. **Governing Law** – This AGREEMENT is governed by, interpreted under and construed and enforced in accordance with the laws of the State of California.
7. **Severability** – If any provision of this AGREEMENT shall be determined by any court to be invalid, illegal or unenforceable to any extent, the remainder of the this AGREEMENT shall not be affected and this AGREEMENT shall be construed as if the invalid, illegal or unenforceable provision had never been contained in this AGREEMENT.
8. **Arbitration** – All disputes hereunder shall be resolved by binding arbitration. If the Parties cannot agree on an arbitrator and/or the rules governing arbitration, the dispute shall be governed by AAA rules.

IN WITNESS WHEREOF, the Parties to this AGREEMENT have caused this AGREEMENT to be executed on their behalf as of the date specified below, respectively, as follows:

CITY OF REDONDO BEACH
A Chartered Municipal Corporation

Mike Gin, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Eleanor Manzano, City Clerk

Michael W. Webb, City Attorney

CITY OF MANHATTAN BEACH

Geoff Dolan, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Liza Tamura, City Clerk

Robert V. Wadden, City Attorney

Exhibit A

Exhibit B

EXHIBIT B
ANNUAL MONITORING SERVICES COST FOR EACH AGENCY

Monitoring/ Observation Site	Manhattan Beach	Hermosa Beach	Redondo Beach	Torrance	Total
SMB 5-01	\$5,720	\$0	\$0	\$0	\$5,720
SMB-5-02	Costs associated with observations at this site are included in Compliance Monitoring costs				
SMB 5-03	\$5,720	\$0	\$0	\$0	\$5,720
SMB 5-05	\$0	\$5,940	\$0	\$0	\$5,940
SMB 0-06	Costs associated with observations at this site are included in Compliance Monitoring costs				
SMB-6-01	Costs associated with observations at this site are included in Compliance Monitoring costs				
SMB 6-02	\$0	\$0	\$6,380	\$0	\$6,380
SMB 6-03	\$0	\$0	\$6,380	\$0	\$6,380
SMB 6-05	\$0	\$0	\$1,914	\$4,466	\$6,380
SMB 6-06	\$0	\$0	\$0	\$5,940	\$5,940
SMB 0-07	Costs associated with observations at this site are included in Compliance Monitoring costs				
SMB 0-08	Costs associated with observations at this site are included in Compliance Monitoring costs				
Total	\$11,440	\$5,940	\$14,674	\$10,406	\$42,460

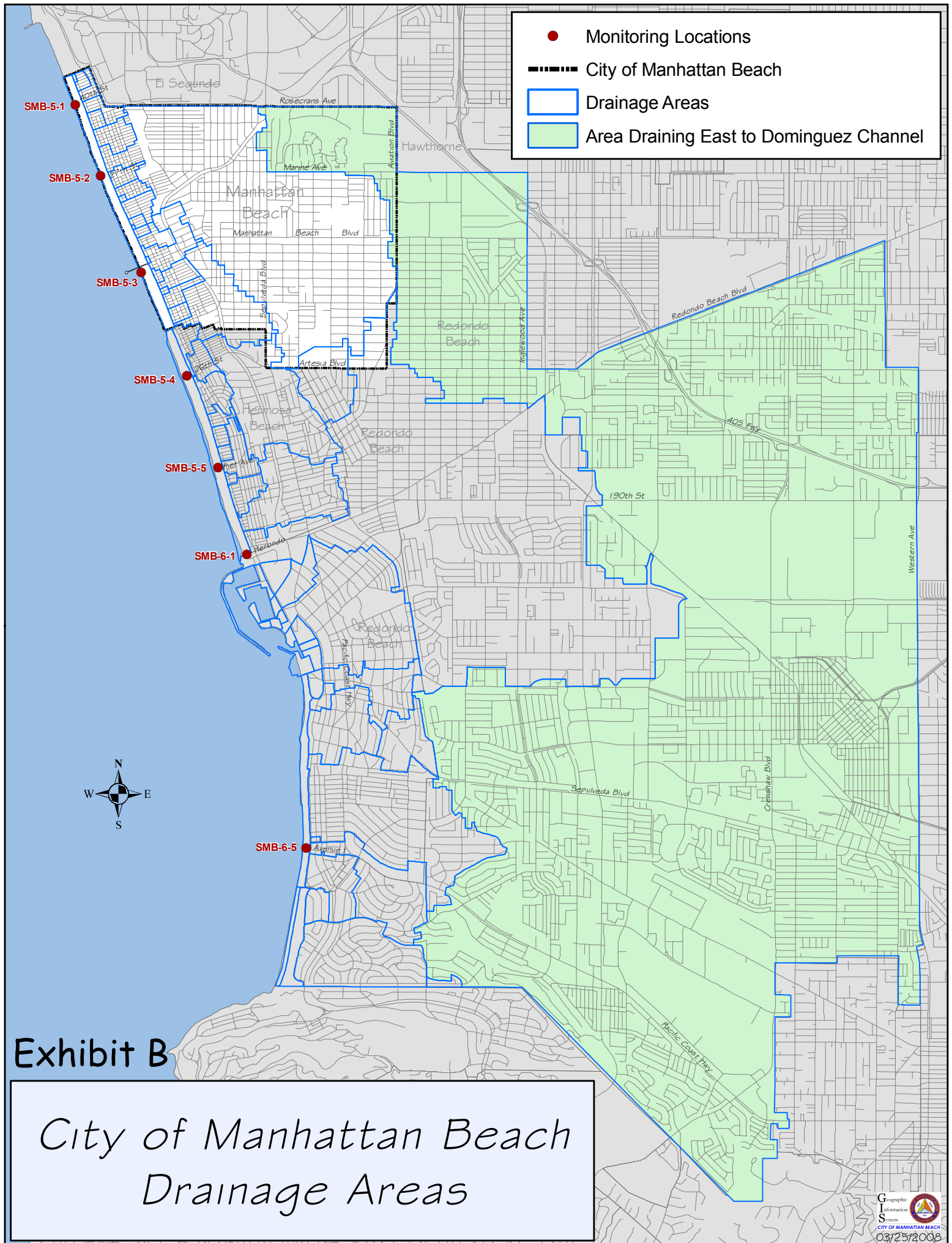


Exhibit B

*City of Manhattan Beach
Drainage Areas*

Exhibit C

City of Manhattan Beach Drainage Areas

