



REPORT TO CITY COUNCIL

DATE: FEBRUARY 25, 2015

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: RAMIRO ADEVA, DIRECTOR OF PUBLIC WORKS/CITY ENGINEER 

SUBJECT: REQUEST TO APPROVE THE THIRD AMENDMENT TO THE MALIBU CREEK BACTERIA TMDL COORDINATED MONITORING PLAN IMPLEMENTATION AGREEMENT

On September 11, 2006, the Los Angeles Regional Water Quality Control Board (Regional Board) approved the Malibu Creek Watershed Bacteria TMDL Compliance Monitoring Plan (CMP). The preparation of the plan was a collaborative effort amongst the watershed agencies (Cities of Calabasas, Westlake Village, Hidden Hills, Malibu, and Thousand Oaks; Counties of Los Angeles and Ventura, and Caltrans), and was a requirement of the Malibu Creek and Lagoon Bacteria Total Maximum Daily Load (TMDL), which became effective January 24, 2006. At the request of the Regional Board staff, monitoring began March 11, 2008. Since 2008, the City of Agoura Hills (City) has administered the compliance monitoring program on behalf of the Malibu Creek Watershed (MCW) group for the Bacteria Total Maximum Daily Load (TMDL).

The National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit was adopted on November 8, 2012, by the Regional Board and became effective December 28, 2012. This permit incorporated both the Bacteria and Trash TMDLs, and included new requirements and specifications for a Monitoring and Reporting Plan (MRP), with the following primary objectives:

- Assess the chemical, physical, and biological impacts of discharges from the MS4 on receiving waters.
- Assess compliance with receiving water limitations (RWLs) and water-quality-based effluent limitations (WQBELs) established to implement Total Maximum Daily Load (TMDL) wet weather and dry weather waste load allocations (WLAs).
- Characterize pollutant loads in MS4 discharges.
- Identify sources of pollutants in MS4 discharges.
- Measure and improve the effectiveness of pollutant controls implemented under the Permit.

Default monitoring requirements are specified in the MRP; however Permittees had the option to develop a Coordinated Integrated Monitoring Program (CIMP) that utilized alternative approaches to meet the stated primary objectives. The CIMP option is

designed to provide the means to develop the information necessary to guide management decisions and to measure compliance with the permit. The City of Agoura Hills, along with its watershed partners, submitted the Final Draft CIMP prior to the June 28, 2014 deadline. It was anticipated the CIMP would be approved by the end of last year, but now may be delayed as late as July 2015. Even though the submitted CIMP includes implementation measures that will supersede our existing plans and programs, the current monitoring program must remain in effect until the CIMP has begun.

On November 12, 2014, the City Council (1) approved the first amendment to the agreement with Clean Lakes, Inc., for professional water quality monitoring services related to the CMP and Trash Monitoring and Reporting Plan (TMRP); (2) allowed staff to oversee the trash compliance monitoring program; and (3) approved the Malibu Creek Watershed TMRP Memorandum of Understanding with the participating agencies. This report requests the City Council's authorization to allow staff to continue to oversee the bacteria compliance monitoring program; and approve the third amendment to the Malibu Creek Watershed Bacteria TMDL Memorandum of Understanding, which extends the terms of the agreement with the participating agencies.

The proposed breakdown of the CMP annual costs are as follows:

Agency	Jurisdictional Area (acres)	Percent Share	Contract Cost	Management Fee	Agency Annual Total
County of Los Angeles	19,890	58.73%	\$65,209.49	\$9,781.42	\$74,990.91
City of Agoura Hills	5,178	15.29%	\$16,976.10	\$2,546.42	\$19,522.52
City of Calabasas	4,279	12.63%	\$14,028.73	\$2,104.31	\$16,133.04
City of Westlake Village	3,540	10.45%	\$11,605.91	\$1,740.89	\$13,346.80
City of Malibu	536	1.58%	\$1,757.28	\$263.59	\$2,020.87
Caltrans	342	1.01%	\$1,121.25	\$168.19	\$1,289.44
City of Hidden Hills	105	0.31%	\$344.24	\$51.64	\$395.88
Totals	33,528	100%	\$111,043.00	\$16,656.46	\$127,699.46

The agreement provides a fair share cost of the contract based on land area, plus a 15% management fee, which is covered collectively by all of the watershed agencies to the lead city providing management of the compliance monitoring program. The City's fair share is 15.3%, due to the City of Thousand Oaks and County of Ventura participating in separate compliance monitoring programs. Staff supports this request since the management fee collected from the agencies reduces the net fiscal impact to the City.

The proposed agreement and amendment have been reviewed and approved as to form by the City Attorney.

RECOMMENDATION

Staff respectfully recommends the City Council:

1. Approve the Third Amendment to the Malibu Creek Watershed Bacteria TMDL Coordinated Monitoring Plan Implementation Agreement.
2. Authorize staff to take the lead on compliance monitoring efforts for the Malibu Creek Watershed Bacteria TMDL Compliance Monitoring Program.
3. Authorize the Mayor to sign the Memorandum of Understanding with the participating agencies on behalf of the City Council.

Attachment: Third Amendment to the Malibu Creek Bacteria TMDL Coordinated Monitoring Plan Implementation Agreement

07-LA-1, PM 46.8/47.2
07-LA-23, PM 6.9/8.9
07-LA-101, PM 29.3/38.19
07-VEN-23, PM 0.0/3.29
07-VEN-101, PM 0.0/1.1

**MALIBU CREEK BACTERIA TMDL
COORDINATED MONITORING PLAN IMPLEMENTATION
CALTRANS AGREEMENT NO. 07-4944A1
E-FIS 000000818 EA 910204**

**THIRD AMENDMENT TO THE MALIBU CREEK BACTERIA TMDL COORDINATED
MONITORING PLAN IMPLEMENTATION AGREEMENT**

This THIRD AMENDMENT ("THIRD AMENDMENT") is made and entered into as of the last date of the last signature set forth below and by and between the CITY OF MALIBU, a municipal corporation ("MALIBU"); the CITY OF CALABASAS, a municipal corporation ("CALABASAS"); the CITY OF WESTLAKE VILLAGE, a municipal corporation ("WESTLAKE VILLAGE"); the CITY OF HIDDEN HILLS, a municipal corporation ("HIDDEN HILLS"); the COUNTY OF LOS ANGELES, a political subdivision of the State of California ("LA COUNTY") (all of the aforementioned are hereinafter collectively referred to as "PARTICIPATING AGENCIES"); the CITY of AGOURA HILLS ("AGOURA HILLS"); and the STATE OF CALIFORNIA, through its Department of Transportation ("CALTRANS"). Collectively, these entities shall be known herein as "PARTIES," or each individually as "PARTY."

WITNESSETH

WHEREAS, on July 31, 2008, the PARTIES entered into an agreement to cooperatively establish a monitoring program that is consistent with the approved MONITORING PLAN and consistent with the provisions of the BACTERIA TMDL, and said agreement expired on March 10, 2011; and

WHEREAS, on May 20, 2011, the PARTICIPATING AGENCIES and AGOURA HILLS entered into that certain agreement entitled "Malibu Creek Bacteria MALIBU CREEK BACTERIA TOTAL MAXIMUM DAILY LOAD "TMDL" Coordinated Monitoring Plan Implementation, AGREEMENT No. 07-4824B" ("AGREEMENT"), attached hereto as Attachment A; and

WHEREAS, on October 16, 2012 the PARTICIPATING AGENCIES and AGOURA HILLS entered into that First Amendment to the AGREEMENT, AMENDMENT No. 07-4944 ("FIRST AMENDMENT"), attached hereto and made part of as Attachment A, to include CALTRANS as a PARTICIPATING AGENCY and a PARTY for the Malibu Creek Bacteria TMDL Monitoring Plan Implementation (MONITORING PLAN), including its contribution of funding toward the MONITORING PLAN; and

CALTRANS AGREEMENT NO. _____

WHEREAS, on March 7, 2013, the PARTICIPATING AGENCIES, AGOURA HILLS and CALTRANS entered into that Second Amendment to the AGREEMENT, AMENDMENT No. 07-4944A1 ("SECOND AMENDMENT"), attached hereto and made a part hereof as Attachment A, to extend the term of the AGREEMENT by two years; and

WHEREAS, the AGREEMENT is set to expire on March 10, 2015 and the PARTIES desire to amend and extend the terms of the AGREEMENT by two years; and

WHEREAS, the PARTIES have agreed to provide funding, subject to annual budget approval, to AGOURA HILLS for the MONITORING PLAN in accordance with each PARTY'S cost allocations set forth in Attachment B, which is attached hereto and made a part hereof.

NOW, THEREFORE, the PARTICIPATING AGENCIES, AGOURA HILLS and CALTRANS, do hereby agree to the following:

That, except as to the changes specifically noted in this section, all provisions and obligations of the AGREEMENT and AMENDMENTS previously executed by the PARTICIPATING AGENCIES, AGOURA HILLS AND CALTRANS will remain in full force and effect as to all PARTIES, and that all PARTIES agree to and are bound by all of the provisions set forth in the AGREEMENT, FIRST AMENDMENT AND SECOND AMENDMENT and this THIRD AMENDMENT for an additional two year period.

The PARTIES agree that the following provisions of the AGREEMENT and its AMENDMENTS shall be amended as follows:

(1) "Section 2 – AGOURA HILLS AGREES" is amended to revise subsection "g" to read as follows:

"g. CALTRANS' funding encumbered under this THIRD AMENDMENT is evidenced by the signature of its District Budget Manager, certifying as to funds in the maximum sum of Two Thousand Five Hundred Seventy-Eight and 88/100 Dollars (\$2,578.88) as indicated in Attachment A having been allocated and represents CALTRANS' share of the work costs. Any cost to be invoiced above this sum will require an amendment to this THIRD AMENDMENT.

This THIRD AMENDMENT 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 CALTRANS Appropriation of Funds – All obligations of CALTRANS under the terms of this THIRD AMENDMENT are subject to the appropriation of the resources by the Legislature and the allocation of resources by the California Transportation Commission. This THIRD AMENDMENT has been written before ascertaining the availability of Federal or State legislative appropriation of funds for the mutual benefit of PARTIES in order to avoid program and fiscal delays

that would occur if this THIRD AMENDMENT was executed after that determination was made. Subject to the other provisions of the AGREEMENT, this THIRD AMENDMENT 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 THIRD AMENDMENT. If the United States Government or the California State Legislature does not appropriate sufficient funds for CALTRANS to participate in this THIRD AMENDMENT, this THIRD AMENDMENT may be amended in writing by the PARTIES to reflect any agreed-upon reduction in the percentage of funds contributed by CALTRANS to continue its participation in this THIRD AMENDMENT. Notwithstanding the foregoing, CALTRANS has the option to withdraw from this THIRD AMENDMENT in the event it determines that sufficient funds are not appropriated for CALTRANS. Should CALTRANS exercise its option to withdraw from this THIRD AMENDMENT, CALTRANS shall provide the remaining PARTIES with a thirty (30)-day written notice. CALTRANS shall further remain responsible for its share of costs and liability, if any, incurred prior to the date of its written notice."

(2) "Section 3 – PARTICIPATING AGENCIES, AGOURA HILLS, CALTRANS AND EACH OF THEM AGREE," is amended to revise the following subsection:

"f. This THIRD AMENDMENT shall be effective on the date of the last PARTY's signature and shall terminate on **March 10, 2017**, except as provided herein and in paragraph g, of Section (1) of this THIRD AMENDMENT."

(3) "EXHIBIT A – JURISDICTIONAL COST SHARE" of the Agreement is hereby amended by adding thereto the items set forth in Attachment B - AMENDED JURISDICTIONAL COST SHARE", which is attached to this THIRD AMENDMENT and incorporated herein as thought set forth in full, reflecting the revised financial contribution of each PARTY. Notwithstanding any other provisions of this THIRD AMENDMENT or the Agreement, CALTRANS' obligation is only to make the financial contribution under the terms of this THIRD AMENDMENT, and CALTRANS is not responsible or liable for the acts or omissions of any other PARTY, including the other PARTICIPATING AGENCIES, their employees or agents nor are any of the PARTICIPATING AGENCIES and AGOURA HILLS responsible for the acts or omissions of CALTRANS, its employees or agents.

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CALTRANS AGREEMENT NO. _____

IN WITNESS WHEREOF, the PARTIES hereto have caused this THIRD AMENDMENT to be executed on their behalf by their respective officers, duly authorized, as follows:

Dated: _____

COUNTY OF LOS ANGELES

By _____

ATTEST:

GAIL FARBER
Director of Public Works

SACHI A. HAMAI
Executive Officer of the
Board of Supervisors of the
County of Los Angeles

APPROVED AS TO FORM:

MARK J. SALADINO
County Counsel

By _____
Deputy

Dated: _____

CITY OF MALIBU

By _____
Jim Thorsen, City Manager

ATTEST:

By _____
Lisa Pope, City Clerk
(seal)

APPROVED AS TO FORM:

By _____
Christi Hogin, City Attorney

CALTRANS AGREEMENT NO. _____

Dated: _____

**CITY OF WESTLAKE VILLAGE,
a municipal corporation**

**By _____
Ned E. Davis, Mayor**

ATTEST:

Beth Schott, City Clerk

APPROVED AS TO FORM:

Terence Boga, City Attorney

CALTRANS AGREEMENT NO. _____

Dated: _____

CITY OF AGOURA HILLS

By _____

Illece Buckley Weber, Mayor

ATTEST:

Kimberly Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney

CALTRANS AGREEMENT NO. _____

Dated: _____

CITY OF CALABASAS

By _____

David J. Shapiro, Mayor

ATTEST:

Maricela Hernandez, MMC, City Clerk

APPROVED AS TO FORM:

Scott H. Howard
City Attorney

CALTRANS AGREEMENT NO. _____

Dated: _____

CITY OF HIDDEN HILLS

By _____

Marv Landon, Mayor

ATTEST:

Cherie L. Paglia, City Manager

APPROVED AS TO FORM:

Roxanne M. Diaz, City Attorney

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**Malcolm Dougherty
Director**

By _____
**Michael Miles
District Director**

Date: _____

APPROVED AS TO FORM AND PROCEDURE:

By _____
Attorney

CERTIFIED AS TO FUNDS:

By _____
**Paul Kwong
District Budget Manager**

CERTIFIED AS TO FINANCIAL TERMS AND CONDITIONS:

By _____
Accounting Administrator

**ATTACHMENT A
FIRST AMENDMENT, SECOND AMENDMENT AND ORIGINAL AGREEMENT**

**ATTACHMENT B
AMENDED JURISDICTIONAL COST SHARE**

AGENCY	JURISDICTIONAL LAND ACRES	PERCENT SHARE	CONTRACT COST	MANAGEMENT FEE	AGENCY ANNUAL TOTAL
Period: 3/2015 to 2/2016					
COUNTY OF LOS ANGELES	19,890	58.72%	\$65,209.49	\$9,781.42	\$74,990.91
CALTRANS	342	1.01%	\$1,121.25	\$168.19	\$1,289.44
AGOURA HILLS	5,178	15.29%	\$16,976.10	\$2,546.42	\$19,522.52
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PERIOD TOTAL	33,528	100.00%	\$111,043.00	\$ 16,656.45	\$127,699.45
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