



REPORT TO CITY COUNCIL

DATE: OCTOBER 23, 2019

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: RAMIRO ADEVA, PUBLIC WORKS DIRECTOR/CITY ENGINEER 

SUBJECT: REQUEST TO APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF AGOURA HILLS AND THE COUNTY OF LOS ANGELES, LOS ANGELES FLOOD CONTROL DISTRICT, AND THE CITIES OF CALABASAS, HIDDEN HILLS, AND WESTLAKE VILLAGE FOR THE MALIBU CREEK WATERSHED COORDINATED INTEGRATED MONITORING PROGRAM

The National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System Permit (MS4 Permit) Order No. R4-2012-0175 established water quality monitoring requirements for stormwater and non-stormwater discharges within the coastal watersheds of Los Angeles County.

The MS4 Permit, which is a highly complex document, allowed the flexibility to coordinate and streamline monitoring efforts to meet the compliance monitoring requirements by developing a Coordinated Integrated Monitoring Program (CIMP). The Malibu Creek Watershed Enhanced Watershed Management Program (MCW EWMP) group, consisting of the County of Los Angeles, Los Angeles Flood Control District, and the cities of Agoura Hills, Calabasas, Hidden Hills, and Westlake Village worked together to develop the CIMP for the Malibu Creek Watershed.

Since the CIMP includes multiple agencies, an agreement was required to provide a fair share for the monitoring contract. On April 13, 2016, the City Council approved a memorandum of understanding (MOU) with the other watershed agencies. In addition to the shared costs, it was agreed upon that City of Agoura Hills (City) would administer the compliance monitoring program on behalf of the MCW EWMP group.

At the request of the County of Los Angeles and Los Angeles Flood Control District, the MCW EWMP group developed a new MOU with estimated costs for monitoring over the next four (4) years. In addition to the EWMP and CIMP program implementation, the proposed MOU includes a special study that considers the attainability of limits required by the MCW Nutrient and Benthic Community Total Maximum Daily Loads (TMDLs). As with the previous MOU, the CIMP cost-share is based on jurisdictional area. The Nutrients Study cost-share is a combination of a flat fee and a weighted cost formula that takes into consideration the land uses within each agency's high, medium, and low nutrient

contribution risk areas. The estimated breakdown of the proposed CIMP annual costs and Nutrients Study are as follows:

Estimated CIMP Costs

Agency	Acres	Percent of Area	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
County of Los Angeles	19,228	58.3%	\$427,191.86	\$622,192.21	\$370,827.68	\$384,966.74
City of Agoura Hills	5,178	15.7%	\$99,765.40	\$145,305.34	\$86,602.24	\$89,904.25
City of Calabasas	4,941	15.0%	\$94,567.21	\$137,734.32	\$82,089.90	\$85,219.86
City of Westlake Village	3,540	10.7%	\$66,317.00	\$96,588.74	\$57,567.06	\$59,762.00
City of Hidden Hills	105	0.3%	\$2,139.26	\$3,115.77	\$1,857.00	\$1,927.81
LA County Flood Control District	-	-	\$36,314.78	\$52,891.39	\$31,523.36	\$32,725.30

Fiscal Year Invoicing for Nutrient Study

Agency	FY 2019/20	FY 2020/21	FY 2021/22	Total
County of Los Angeles	\$849,881.88	\$0	\$0	\$849,881.88
City of Agoura Hills	\$53,720.38	\$107,440.76	\$107,440.76	\$268,601.90
City of Calabasas	\$51,827.96	\$103,655.92	\$103,655.92	\$259,139.80
City of Westlake Village	\$40,782.42	\$81,564.84	\$81,564.84	\$203,912.10
City of Hidden Hills	\$21,845.37	\$43,690.73	\$43,690.73	\$203,912.10
LA County Flood Control District	\$17,797.50	\$35,595.00	\$35,595.00	\$88,987.50

The costs listed above include a 10% contingency, and a 5% management fee, which is covered, collectively, by all of the watershed agencies to the lead city providing management of the compliance monitoring program. Staff supports this request since the management fee collected from the agencies reduces the net fiscal impact to the City. It should be noted the County of Los Angeles has agreed to pay their entire fair share for the Nutrient Study this fiscal year to minimize fiscal impacts to the other agencies. The City's estimated fair shares of \$99,765.40 (CIMP) and \$53,720.38 (Nutrient Study) have been accounted for in Fiscal Year 2019-20 stormwater budget.

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

RECOMMENDATION

Staff respectfully recommends the City Council approve the Memorandum of Understanding between the City of Agoura Hills and the County of Los Angeles, Los Angeles Flood Control District, and the cities of Calabasas, Hidden Hills, and Westlake Village for the Malibu Creek Watershed Coordinated Integrated Monitoring Program.

Attachments: Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,
THE COUNTY OF LOS ANGELES, AND THE CITIES OF
AGOURA HILLS, CALABASAS, HIDDEN HILLS, AND WESTLAKE VILLAGE**

REGARDING THE ADMINISTRATION AND COST SHARING FOR IMPLEMENTING THE COORDINATED INTEGRATED MONITORING PROGRAM AND NECESSARY REPORTS FOR THE MALIBU CREEK WATERSHED, AND SPECIAL STUDY TO ADDRESS TECHNICAL AND REGULATORY ISSUES IN ATTAINABILITY AND APPLICABILITY OF MALIBU CREEK WATERSHED NUTRIENT AND BENTHIC COMMUNITY TOTAL MAXIMUM DAILY LOADS

This Memorandum of Understanding (“MOU” or “AGREEMENT”), made and entered into as of the date of the last signature set forth below by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT (“LACFCD”), a body corporate and politic, the COUNTY OF LOS ANGELES (“COUNTY”), a political subdivision of the State of California, and the CITIES OF AGOURA HILLS, CALABASAS, HIDDEN HILLS AND WESTLAKE VILLAGE. Collectively, these entities shall be known herein as “PARTIES” or individually as “PARTY.”

WITNESSETH

WHEREAS, the Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) adopted National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit (“MS4 Permit”) Order No. R4-2012-0175-A01, that amends Order No. R4-2012-0175 as amended by State Water Board Order WQ 2015-0075; and

WHEREAS, the MS4 Permit became effective on December 28, 2012 and requires that the LACFCD, COUNTY, and 84 of the 88 Cities (excluding Avalon, Long Beach, Palmdale, and Lancaster) within the County of Los Angeles comply with the prescribed elements of the MS4 Permit that include a number of Total Maximum Daily Loads (TMDLs); and

WHEREAS, the MS4 Permit identified the PARTIES as MS4 permittees that are responsible for compliance with the MS4 Permit requirements pertaining to the Malibu Creek Watershed; and

WHEREAS, the PARTIES entered into an agreement on August 19, 2013 regarding the administration and cost sharing for development of the Malibu Creek Watershed Enhanced Watershed Management Program (“EWMP”) and Coordinated Integrated Monitoring Program (“CIMP”) for the Malibu Creek Watershed; and

WHEREAS, the CIMP was submitted to the Regional Board by the PARTIES on June 26, 2014 and conditionally approved by the Regional Board Executive Officer on January 21, 2016; and

WHEREAS, the EWMP was submitted to the Regional Board by the PARTIES on June 24, 2014 and conditionally approved by the Regional Board Executive Officer on April 27, 2016, and the EWMP describes the Nutrient Special Study as part of the PARTIES compliance with the Malibu Creek Watershed Nutrient and Benthic Community Total Maximum Daily Loads (“NUTRIENT SPECIAL STUDY”); and

WHEREAS, the PARTIES have agreed to collaborate on the compliance of certain elements of the MS4 Permit and have agreed to a cost sharing formula set forth in Exhibit B, which is attached and made part of this MOU; and

WHEREAS, the PARTIES have agreed to enter into this MOU to share costs in the continued implementation of the Malibu Creek CIMP as set forth in Table A2 of Exhibit B, that maintains the same land area-based cost sharing formula that was used to conduct CIMP monitoring since 2016, which is attached and made part of this MOU; and

WHEREAS, the PARTIES have agreed to enter into this MOU to share costs in the implementation of the special study in the Malibu Creek Watershed as set forth in Table B4 of Exhibit B, which is attached and made part of this MOU; and

WHEREAS, the PARTIES desire to transfer the unused funds, estimated to be less than \$75,000, from the CIMP implementation agreements that expired on June 30, 2019, currently held by the CITY OF AGOURA HILLS, toward future annual invoices issued for cost of work performed under this AGREEMENT; and

WHEREAS, the PARTIES agree that each shall assume full and independent responsibility for ensuring its own compliance with the MS4 Permit monitoring requirements despite the collaborative approach of this MOU; and

WHEREAS, the PARTIES collaboratively prepared a final Scope of Work (“SOW”) set forth in Exhibit C and Request for Proposals (“RFP”) to obtain a consultant (“Consultant”) to assist the PARTIES in implementing and complying with the CIMP; and

WHEREAS, the PARTIES have determined that hiring the Consultant to implement the CIMP to install monitoring equipment, obtain permits, conduct monitoring, coordinate laboratory analysis, advise on potential revisions to the CIMP, and provide reporting of stormwater samples will be beneficial to the PARTIES; and

WHEREAS, the PARTIES collaboratively prepared a final Scope of Work (“SOW”) for the special study set forth in Exhibit D and desire obtain have the same Consultant assist the PARTIES in implementing and complying with the SOW; and

WHEREAS, the PARTIES propose for the Consultant to implement the CIMP and NUTRIENT SPECIAL STUDY in accordance with the applicable SOW, at a total cost not to exceed \$4,848,846.45 which includes a 5% project administrative fee, and a 10% contingency; and

WHEREAS, the PARTIES have agreed to have their PARTY Representatives identified in Exhibit A provide technical and project management oversight for the implementation of the CIMP and this AGREEMENT; and

WHEREAS, the CITY OF AGOURA HILLS will act on behalf of the PARTIES in the administration of the Consultant's professional services agreement for implementation of the CIMP and Special Study;

WHEREAS, the LACFCD will act on behalf of the PARTIES to monitor bacteria, nutrients, and chlorophyll-a, at LACFCD's Malibu Creek Mass Emission Station; and

WHEREAS, other entities subject to their own NPDES Permit and/or named as responsible agencies in a TMDL may participate in applicable portions of the CIMP by amendment to this MOU, with the concurrence of the PARTIES;

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 cooperatively fund the implementation of the Malibu Creek CIMP and to coordinate the payment and performance of the Consultant's services in implementing the CIMP.

Section 3. Cooperation.

- a. The PARTIES shall fully cooperate with one another to attain the purposes of this MOU.
- b. The PARTIES agree that substantiated costs incurred by the CITY OF AGOURA HILLS and the LACFCD for implementing certain requirements of the CIMP and MS4 Permit until MOU execution shall be cost-shared by the PARTIES.

Section 4. Voluntary. This MOU is voluntarily entered into for the implementation of the CIMP.

Section 5. Term. This MOU shall become effective on the last date of execution by a PARTY and shall remain in effect until June 30, 2023.

Section 6. City of Agoura Hills Responsibilities. The CITY OF AGOURA HILLS agrees:

- a. Consultant Services. To facilitate the PARTIES in the management the Consultant for implementation of the CIMP and NUTIRENT SPECIAL STUDY, and to administer the Consultant's contract in accordance with SOWs included in Exhibit C and Exhibit D, prepared by the PARTIES, and any subsequent changes to the SOWs as agreed upon by the PARTIES and approved by the Regional Board where applicable. The CITY OF AGOURA HILLS will be compensated for the administration of the Consultant's contracts at a rate of five percent (5 %) of each PARTY'S contract cost as described in Table A2 and Table B4 of Exhibit B.
- b. LACFCD Facilities/Mass Emissions Station. To assist the Consultant in obtaining any necessary permits from LACFCD for access to and construction within LACFCD storm drains, channels, catch basins, and similar properties (FACILITIES), provided CITY OF AGOURA HILLS and its Consultant provide written notice 72 hours in advance of entry to LACFCD's FACILITIES.
- c. Report. To submit reports to the Regional Board as described in the CIMP and distribute copies of the reports to the PARTIES prior to submittal to the Regional Board for review and comment. The CITY OF AGOURA HILLS will provide the PARTIES with an electronic copy of the draft CIMP Annual Report and completed CIMP Annual Report within 7 business days after receipt from the Consultant. In addition, the CITY OF AGOURA HILLS will submit to the PARTIES the data used to prepare the reports. This data will be transmitted electronically in a format and structure agreed to by the PARTIES. Reports and work products as required by the SOW for the NUTRIENT SPECIAL STUDY shall be handled in a similar fashion.
- d. Invoice. To invoice the PARTIES in amounts not exceeding the invoice amounts shown in Table A2 and Table B4 of Exhibit B, reduced by the amount of any credit for unused funds owed to the respective PARTIES under the prior CIMP Agreement. The annual payments for the period of July 1 through June 30 will be invoiced in May of that year. At the end of each fiscal year, any unused funds will be rolled over and used towards future years of implementation of the CIMP.
- e. Expenditure. To utilize the funds deposited by the PARTIES only for the administration of the Consultant's contract and the implementation of the CIMP and Special Study. The CITY OF AGOURA HILLS will provide an accounting of funds expended and remaining at the end of each fiscal year.
- f. Contingency. The CITY OF AGOURA HILLS will notify the PARTIES if actual expenditures are anticipated to exceed the cost estimates contained in Table A1

and Table B1 of Exhibit B and obtain written approval of such expenditures from all PARTIES. Upon approval, the PARTIES agree to reimburse the CITY OF AGOURA HILLS for their proportional share of these additional expenditures at an amount not to exceed 10 percent of the original cost estimate as shown in Table A1 and Table B1 of Exhibit B. This 10 percent contingency will not be invoiced, unless actual expenditures exceed the original cost estimate. Expenditures that exceed the 10 percent contingency will require an amendment to this MOU.

- g. Accounting. To provide an accounting upon termination of this MOU within 180 days of said termination. At the completion of the accounting, the CITY OF AGOURA HILLS shall return any unused portion of all funds deposited with the CITY OF AGOURA HILLS within 180 days of said termination in accordance with the cost allocation formula set forth in Table A2 and Table B4 of Exhibit B, as described below in Section 10(e).
- h. Permit. To make a full-faith effort to work with the Consultant to obtain all necessary permits for installation of permanent infrastructure or modifications to monitoring sites, and subsequent access during monitoring events and maintenance.
- i. Payments to Third Parties. The CITY OF AGOURA HILLS shall have no obligation to pay the Consultant any funds other than those owed for the CITY OF AGOURA HILLS's proportional share as set forth in Table A2 and Table B4 of Exhibit B; and those funds remitted to the CITY OF AGOURA HILLS following invoice.

Section 7. LACFCD Responsibilities. The LACFCD agrees:

- a. LACFCD Mass Emissions Station (MES) Monitoring. To provide available monitoring data from the existing MES owned and operated by the LACFCD. Data will be limited to water column chemistry and aquatic toxicity.
- b. Additional Monitoring at LACFCD Mass Emissions Station. To coordinate with the CITY OF AGOURA HILLS for additional monitoring required by the CIMP at its existing MES. The cost of additional monitoring shall be cost-shared in accordance with Exhibit B.
- c. Access to LACFCD Facilities/Mass Emissions Station. To grant access to the CITY OF AGOURA HILLS and its Consultant to LACFCD FACILITIES, to achieve the purposes of this MOU, provided the CITY OF AGOURA HILLS and its Consultant obtain a permit and provide written notice 72 hours in advance of entry to LACFCD's FACILITIES.
- d. Monitoring Services. To implement the additional monitoring and reporting requirements at LACFCD's MES and any subsequent changes to the CIMP as

agreed upon by the PARTIES and approved by the Regional Board. LACFCD will comply with all applicable procurement requirements.

- e. Report. To submit the data to the CITY OF AGOURA HILLS or its Consultant to be incorporated and submitted to the REGIONAL BOARD as described in the CIMP. This data will be transmitted electronically in a format that contains the table structure and syntax agreed upon by the PARTIES, e.g., the latest Stormwater Monitoring Coalition Standard Data Transfer Format, or California Environmental Data Exchange Network format.

Section 8. Parties Further Agree. The PARTIES further agree:

- a. Payment. To fund the cost of the implementation of the CIMP and NUTRIENT SPECIAL STUDY, and to pay the CITY OF AGOURA HILLS and the LACFCD for their proportional shares of the estimated cost for the implementation of the CIMP and NUTRIENT SPECIAL STUDY, the project administration and of the Consultant's contracts not exceeding the invoice amounts as shown in Table A2 and Table B4 of Exhibit B, no later than 60 days after receipt of the invoice from the CITY OF AGOURA HILLS. The cost estimates presented in Exhibit B have been agreed upon by the PARTIES and are subject to changes pursuant to new Regional Board requirements and/or unforeseen challenges in the field. Any such changes proposed to the PARTIES' proportional share are subject to funding appropriation and will require written approval of the PARTIES as explained in Section 6(f).
- b. Documentation. To make a full-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 to the Consultant that is deemed necessary by the PARTIES to implement the CIMP and NUTRIENT SPECIAL STUDY.
- c. Access. Each PARTY will allow reasonable access and entry to the CITY OF AGOURA HILLS and its Consultant, on an as needed basis during the term of this MOU, to each PARTY'S FACILITIES to achieve the purposes of this MOU, provided, however, that prior to entering any of the PARTY'S FACILITIES, the Consultant provide written notice 72 hours in advance of entry from the applicable PARTY.
- d. Permit. Each PARTY will make a full-faith effort to work with the Consultant to obtain all necessary permits for installation of permanent infrastructure or modifications to stormwater monitoring sites within each PARTY'S jurisdiction.

- e. Reconciliation of Prior CIMP Agreement. That the CITY OF AGOURA HILLS may apply any unused funds it is holding pursuant to the prior CIMP Agreements as a credit toward invoices issued under this MOU, as described in Section 6(d). The PARTIES agree that such payments will fulfill the obligations of the CITY OF AGOURA HILLS under the prior CIMP Agreements to return unused funds.
- f. Additional Participants. The PARTIES agree that if any other entity wishes to participate and cost share any element of the CIMP and NUTRIENT SPECIAL STUDY, an amendment to the MOU will be drafted with the concurrence of the MS4 Permittees.

Section 9. Indemnification.

- a. To the maximum extent permitted by law, the CITY OF AGOURA HILLS shall require the Consultant retained pursuant to this MOU to agree to indemnify, defend, and hold harmless each PARTY, its special districts, elected and appointed officers, employees, attorneys, agents, and designated volunteers from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert fees), arising from or connected with the Consultant's performance of its agreements with the CITY OF AGOURA HILLS. In addition, the CITY OF AGOURA HILLS shall require the Consultant to carry, maintain, and keep in full force and effect an insurance policy or policies, and each PARTY, its elected and appointed officers, employees, attorneys, agents and designated volunteers shall be named as additional insureds on the policy(ies) with respect to liabilities arising out of the Consultant's work. These requirements will also apply to any subcontractors hired by the Consultant.
- b. To the maximum extent permitted by law, each PARTY shall indemnify, defend, and hold harmless each other PARTY, including its special districts, elected and appointed officers, employees, attorneys, agents and designated volunteers, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the respective acts of each PARTY under this MOU; provided, however, that no PARTY shall indemnify another PARTY for that PARTY's own negligence or willful misconduct.
- c. 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 that 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. The PARTIES agree that any liability borne by or imposed upon any PARTY or PARTIES hereto as a result of this MOA that is not caused by or attributable to the negligence or willful misconduct of any PARTY shall be fully borne by all the PARTIES in accordance with their pro rata cost share, as set forth in CIMP MOA.

- d. CITY OF AGOURA HILLS makes no guarantee or warranty that the reports prepared by the Consultant will be approved by the relevant governmental authorities. CITY OF AGOURA HILLS shall have no liability to the other PARTIES for the negligent or intentional acts or omissions of the Consultant. The other PARTIES' sole recourse for any negligent or intentional act or omission of the Consultant shall be against the Consultant and their insurance.

Section 10. Termination, Withdrawal, and Delinquent Payments.

- a. Termination. This MOU may be terminated upon the express written agreement of all PARTIES. Completed work shall be owned by the PARTY or PARTIES who fund the completion of such work. Rights to uncompleted work by the Consultant still under contract will be held by the PARTY or PARTIES who fund the completion of such work.
- b. Withdrawal. If a PARTY wishes to withdraw from this MOU for any reason, that PARTY must give the other PARTIES and the REGIONAL BOARD prior written notice thereof. The withdrawing PARTY shall be responsible for its share of the implementation costs of the CIMP and NUTRIENT SPECIAL STUDY through the end of the current fiscal year (July 1 through June 30), including costs for reporting of data and results during the monitoring year which said PARTY withdraws. Moreover, unless the withdrawing PARTY provides written notice of withdrawal to the other PARTIES by December 15th the withdrawing PARTY shall also be responsible for its share of the implementation costs of the CIMP through the end of the following monitoring year (e.g., If a PARTY withdraws on December 16, 2019, said PARTY is responsible for its share of costs for both monitoring year 2019-2020 and monitoring year 2020-2021. If the same PARTY withdraws on or before December 15, 2019, said PARTY is responsible for costs only for monitoring year 2019-2020, not for monitoring year 2020-2021). Such implementation costs of the CIMP shall include the remaining fees of any Consultant retained by the CITY OF AGOURA HILLS through the end of the applicable monitoring year(s). The effective date of withdrawal shall be the 60th day after the CITY OF AGOURA HILLS receives written notice of a PARTY's intent

to withdraw. Should any PARTY withdraw from this MOU, the remaining PARTIES' cost share allocation shall be adjusted in accordance with the cost allocation formula in Table A2 of Exhibit B. Each PARTY shall be responsible for its proportional share of the implementation costs of the CIMP incurred through the completion of all requirements of the monitoring year (e.g., completion of the annual report due December 15, 2019, covering the monitoring period from July 1, 2018 to June 30, 2019). Each PARTY shall also be responsible for the payment of its own fines, penalties and costs incurred as a result of the non-performance of the CIMP.

- c. Delinquent Payments. A PARTY's payment shall be delinquent if its invoiced payment is not received by the CITY OF AGOURA HILLS within 60 days after the invoice's date. The following Notice of Delinquency procedures may be implemented to attain payments from the delinquent PARTY per instructions from the CITY OF AGOURA HILLS: 1) verbally contact the representative of the PARTY; and 2) submit a formal letter to the Delinquent PARTY OR PARTIES from the CITY OF AGOURA HILLS's legal counsel. If the PARTY or PARTIES remain delinquent after the above Notice of Delinquency procedures have been followed and after 90 days after being invoiced, then the CITY OF AGOURA HILLS shall notify the non-delinquent PARTIES and may notify the Regional Board that the delinquent PARTY OR PARTIES are no longer a participating member of the CIMP and NUTRIENT SPECIAL STUDY, and said PARTY or PARTIES shall then be deemed to have terminated its participation as a PARTY to this MOU ("EXCLUDED PARTY") and their name(s) may be removed from the CIMP and NUTRIENT SPECIAL STUDY and all reports required as part of the CIMP and NUTRIENT SPECIAL STUDY. Any EXCLUDED PARTY'S delinquent amount(s) will be paid in accordance with the remaining PARTIES pro-rata share pursuant to Table A2 and Table B4 of Exhibit B, as adjusted to remove the EXCLUDED PARTY from the allocation. The CITY OF AGOURA HILLS will revise Exhibit B to show the recalculated costs for each remaining participating PARTY; these revised exhibits will be included with the next invoice to the PARTIES. The PARTIES shall retain all contractual, legal, and equitable rights and causes of action to recover any delinquent amounts paid that were owed by an EXCLUDED PARTY or PARTIES who failed to make such payments.
- d. Suspension of Consultant's Work. The CITY OF AGOURA HILLS may unilaterally suspend or modify the Scope of Work being performed by any Consultant retained by the CITY OF AGOURA HILLS for implementation of the CIMP and NUTRIENT SPECIAL STUDY if any PARTY has not paid its invoice within 90 days of receipt unless the non-delinquent PARTIES pay the delinquent PARTY's costs.
- e. Remaining Funds or Invoices Due at Termination. If this MOU is mutually terminated by all PARTIES, and invoice payments are due then all PARTIES must agree on the equitable payment of invoices due at the time of termination. Funds

remaining in the possession of the CITY OF AGOURA HILLS at the end the term of this MOU, or at the termination of this Agreement, whichever occurs earlier, shall be returned to the then remaining non-delinquent and non-excluded PARTIES within 180 days of said termination in accordance with the cost allocation formula in Table A2 and Table B4 of Exhibit B. Subject to agreement by the CITY OF AGOURA HILLS, any funds which are to be reimbursed to a PARTY may be reimbursed through credits towards future invoices and agreements, if requested in writing by that PARTY.

- f. Notwithstanding any provision of this Agreement, in the event that the CITY OF AGOURA HILLS's documented project administrative costs in administering the Consultant professional services agreement and this MOU exceeds the 5% project administrative fees paid by the PARTIES, the CITY OF AGOURA HILLS shall invoice the PARTIES for the additional project administrative costs in accordance with the cost allocation formula in Table A2 and Table B4 of Exhibit B, and the PARTIES shall reimburse CITY OF AGOURA HILLS for additional documented project administrative costs in excess of the 5% project administrative fees within 60 days from the date of the invoice to the PARTIES. If the PARTIES do not reimburse CITY OF AGOURA HILLS for additional documented project administrative costs within the 60 days of the date of the invoice, then the City of Agoura Hills may unilaterally terminate this MOU with 60 days notice to the PARTIES. In such event, the termination date of this MOU shall be effective on the 61st day after the CITY OF AGOURA HILLS has mailed notice of termination of this MOU.

Section 11. General Provisions.

- a. 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 representatives of the PARTIES at the addresses set forth in Exhibit A attached hereto and incorporated herein by reference. The PARTIES shall promptly notify each other of any change of contact information, including personnel changes, provided in Exhibit C. 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) to the addresses set forth in Exhibit A.
- b. Administration. For the purposes of this MOU, the PARTIES hereby designate as their respective PARTY representatives the persons named in Exhibit A. The designated PARTY representatives, or their respective designees, shall administer the terms and conditions of this MOU on behalf of their respective PARTY. Each

of the persons signing below on behalf of a PARTY represents and warrants that he or she is authorized to sign this MOU on behalf of such PARTY.

- c. 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.
- d. 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.
- e. Amendment. The terms and provisions of this MOU may not be amended, modified, or waived, except by an instrument in writing signed by all non-delinquent PARTIES. For purposes of this subsection, a PARTY shall be considered a Delinquent Party if that PARTY fails to timely pay an invoice as required by Section 8(a) or withdraws pursuant to Section 10(b).
- f. Law to Govern. This MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
- g. Severability. If any provision of this MOU shall be determined by any court to be invalid, illegal, or unenforceable to any extent, then the remainder of this MOU shall not be affected, and this MOU shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.
- h. Entire Agreement. This MOA constitutes the entire agreement of the PARTIES with respect to the subject matter hereof.
- i. 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.
- j. Counterparts. This MOU may be executed in any number of 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 counterparts shall have been delivered to all PARTIES to this MOU.

- k. 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 11(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:

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COUNTY OF LOS ANGELES

By _____
Mark Pestrella, Director of Public Works

Date

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By _____
Deputy

Date

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By _____
Mark Pestrella, Chief Engineer

Date

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By _____
Deputy

Date

CITY OF AGOURA HILLS

By _____
Linda L. Northrup, Mayor

Date

ATTEST:

By _____
Kimberly M. Rodrigues, City Clerk

Date

APPROVED AS TO FORM:

By _____
Candice K. Lee, City Attorney

Date

CITY OF CALABASAS

By _____
David J. Shapiro, Mayor

Date

ATTEST:

By _____
Maricela Hernandez, City Clerk

Date

APPROVED AS TO FORM:

By _____
Scott H. Howard, City Attorney

Date

CITY OF HIDDEN HILLS

By _____
Larry G. Weber, Mayor

Date

ATTEST:

By _____
Kerry Kallman, City Manager

Date

APPROVED AS TO FORM:

By _____
Roxanne M. Diaz, City Attorney

Date

CITY OF WESTLAKE VILLAGE

By _____
Ned E. Davis, Mayor

Date

ATTEST:

By _____
Beth Schott, City Clerk

Date

APPROVED AS TO FORM:

By _____
Terence Boga, City Attorney

Date

EXHIBIT A

Malibu Creek Watershed CIMP Responsible Agencies Representatives

City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Representative: Kelly Fisher
E-mail: kfisher@ci.agoura-hills.ca.us
Phone: (818) 597-7338

City of Calabasas
100 Civic Center Way
Calabasas, CA 91302
Representative: Alex Farassati
E-mail: afarassati@cityofcalabasas.com
Phone: (818) 224-1680

City of Hidden Hills
6165 Spring Valley Road
Hidden Hills, CA 91302
Representative: Joe Bellomo
E-mail: jbellomo@willdan.com
Phone: (805) 279-6856

City of Westlake Village
31200 Oak Crest Drive
Westlake Village, CA 91361
Representative: Kelsey Erisman
E-mail: kerisman@willdan.com
Phone: (818) 383-3092

County of Los Angeles
Flood Control District
Watershed Management Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Representative: Paul Alva
E-mail: palva@dpw.lacounty.gov
Phone: (626) 458-4325

County of Los Angeles
Department of Public Works
Watershed Management Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Representative: Mark Lombos
E-mail: mlombos@dpw.lacounty.gov
Phone: (626) 458-7143

EXHIBIT B

**MALIBU CREEK WATERSHED
COST SHARING TABLES**

Table A1. Estimated Consultant Contract Costs for CIMP

Item		Fiscal Year 2019-2020	Fiscal Year 2020-2021	Fiscal Year 2021-2022	Fiscal Year 2022-2023
Consultant Contract Cost	(a)	\$691,710.00	\$1,007,455.00	\$600,445.00	\$623,339.00
Management Fee	(b) = (a) x 5%	\$34,585.50	\$50,372.75	\$30,022.25	\$31,166.95
LACFCD 5% Allocation	(c) = ((a) + (b)) x 5%	\$36,314.78	\$52,891.39	\$31,523.36	\$32,725.30
Total Cost to be Shared	(d) = (a) + (b) - (c)	\$689,980.73	\$1,004,936.36	\$598,943.89	\$621,780.65
Total Cost Per Year	(e) = (c) + (d)	\$726,295.50	\$1,057,827.75	\$630,467.25	\$654,505.95
Contract Contingency ⁽¹⁾	(f) = (e) x 10%	\$72,629.55	\$105,782.78	\$63,046.73	\$65,450.60

(1) Only invoice through special agreement, and written authorization by PARTIES.

Table A2. Cost Share Allocation Formula for CIMP

Party	Acres	Percent of Area ⁽²⁾	Fiscal Year 2019-2020 ⁽³⁾	Fiscal Year 2020-2021 ⁽³⁾	Fiscal Year 2021-2022 ⁽³⁾	Fiscal Year 2022-2023 ⁽³⁾	Total Cost
City of Agoura Hills	5,178	15.7%	\$99,765.40	\$145,305.34	\$86,602.24	\$89,904.25	\$421,577.23
City of Calabasas	4,941	15.0%	\$94,567.21	\$137,734.32	\$82,089.90	\$85,219.86	\$399,611.28
City of Hidden Hills	105	0.3%	\$2,139.26	\$3,115.77	\$1,857.00	\$1,927.81	\$9,039.83
City of Westlake Village	3,540	10.7%	\$66,317.00	\$96,588.74	\$57,567.06	\$59,762.00	\$280,234.80
County of Los Angeles Unincorporated	19,228	58.3%	\$427,191.86	\$622,192.21	\$370,827.68	\$384,966.74	\$1,805,178.48
Los Angeles County Flood Control District ⁽¹⁾	-	-	\$36,314.78	\$52,891.39	\$31,523.36	\$32,725.30	\$153,454.82
Totals	32,992	100%	\$726,295.50	\$1,057,827.75	\$630,467.25	\$654,505.95	\$3,069,096.45

(1) Los Angeles County Flood Control District's cost share equals 5% of total costs as expressed by "c" in Table A1.

(2) Based on percent of land in each Party area of the EWMP area (excludes Angeles National Forest land).

(3) Percent of Area multiplied by Item "d" of Table A1 for corresponding year; LACFCD cost is determined by Item "c" of Table A1. Totals include the 5% management fee.

Table B1. Estimated Consultant Contract Costs for Nutrient Special Study

Item		Fiscal Year 2019-2020	Fiscal Year 2020-2021	Fiscal Year 2021-2022	Total Cost
Consultant Contract Cost	(a)	\$986,529.04	\$354,235.48	\$354,235.48	\$1,695,000.00
LACFCD 5% Allocation	(b) = (a) x 5%	\$49,326.45	\$17,711.77	\$17,711.77	\$84,750.00
Contract Cost to be Shared	(c) = (a) - (b)	\$937,202.59	\$336,523.71	\$336,523.71	\$1,610,250.00
Contract Management Fee (5%)	(d) = (a) x 5%	\$49,326.45	\$17,711.77	\$17,711.77	\$84,750.00
Total Cost Per Year	(e) = (a) + (d)	\$1,035,855.49	\$371,947.25	\$371,947.25	\$1,779,750.00
Contract Contingency ⁽¹⁾	(f) = (e) x 10%	\$103,585.55	\$37,194.73	\$37,194.73	\$177,975.00

(1) Only invoice through special agreement, and written authorization by PARTIES.

Table B2: Land Use Risk Breakdown Per Agency

Land Description (2005 SCAG, Using 2016 SCAG Codes)	Nutrient Risk Prioritization ⁽¹⁾	Agoura Hills		Calabasas		Hidden Hills		Westlake Village		County	
		Acres	%	Acres	%	Acres	%	Acres	%	Acres	%
Single-Family Residential	MN	1728	34.5	511	10.8	69	64.5	757	21.5	516	2.4
Mult-Family Residential	LN	194	3.9	134	2.8			129	3.7		
Other Residential	MN			44	0.9			40	1.1	1348	6.3
General Office	MN	87	1.7	88	1.9			177	5.0	24	0.1
Commercial and Services	MN	180	3.6	35	0.7			77	2.2	1	0.0
Facilities	MN	29	0.6	26	0.5			32	0.9	20	0.1
Education	MN	86	1.7	26	0.5	5	4.7	38	1.1	30	0.1
Industrial	LN	34	0.7	24	0.5			74	2.1	6	0.0
Transportation, Communication, & Utilities	LN	147	2.9	79	1.7			104	3.0	332	1.6
Mixed Commercial & Industrial	LN	34	0.7								
Open Space and Recreation	MN	108	2.2	27	0.6			150	4.3	230	1.1
Agriculture	HN	25	0.5	99	2.1	1	0.9			387	1.8
Vacant	LN	2321	46.4	3524	74.5	32	29.9	1717	48.8	18378	85.8
Water	-	14	0.3					205	5.8	45	0.2
Under Construction	MN	17	0.3	113	2.4			22	0.6	95	0.4

(1) LN = Low Nutrient Risk, MN = Medium Nutrient Risk, HN = High Nutrient Risk

Table B3: Per Party Land Area by Risk and Assignment of Weighting Factor

Party	High Nutrient (HN) Contribution Risk		85%	Medium Nutrient (MN) Contribution Risk		10%	Low Nutrient (LN) Contribution Risk		5%
	Acres	% of HN	% Total	Acres	% of MN	% Total	Acres	% of LN	% Total
City of Agoura Hills	25	4.9	0.1	2,235	33.2	6.4	2,730	10.0	7.8
City of Calabasas	99	19.3	0.3	870	12.9	2.5	3,761	13.8	10.8
City of Hidden Hills	1	0.2	0.0	74	1.1	0.2	32	0.1	0.1
City of Westlake Village	-	0.0	0.0	1,293	19.2	3.7	2,024	7.4	5.8
County of Los Angeles Unincorporated	387	75.6	1.1	2,264	33.6	6.5	18,716	68.6	53.7
Los Angeles County Flood Control District	-	-	-	-	-	-	-	-	-
Total	512	100	100	6,736	100	19	27,263	100	78

Table B4: Party Cost Share Allocation for Nutrient Special Study

Party	(x)	Weighted Formula ⁽²⁾	Flat Fee ⁽³⁾	Subtotal	Management Fee	Total Cost Share
City of Agoura Hills	1	\$155,811.33	\$100,000.00	\$255,811.33	\$12,790.57	\$268,601.89
City of Calabasas	2	\$146,799.81	\$100,000.00	\$246,799.81	\$12,339.99	\$259,139.80
City of Hidden Hills	3	\$4,025.55	\$100,000.00	\$104,025.55	\$5,201.28	\$109,226.83
City of Westlake Village	4	\$94,202.00	\$100,000.00	\$194,202.00	\$9,710.10	\$203,912.10
County of Los Angeles Unincorporated	5	\$609,411.31	\$200,000.00	\$809,411.31	\$40,470.57	\$849,881.88
Los Angeles County Flood Control District ⁽¹⁾	-		\$84,750.00	\$84,750.00	\$4,237.50	\$88,987.50
Totals		\$1,010,250.00	\$684,750	\$1,695,000.00	\$84,750	\$1,779,750.00

(1) Los Angeles County Flood Control District's cost share equals 5% of total costs as expressed by "(e)" in Table B1.

(2) Special formula, each Party area of the EWMP area (excludes Parks land).

$$Party_{(x)} Cost Share = [(c) - \$600,000] \times \frac{(HN_{\%} \times HN_x) + (MN_{\%} \times MN_x) + (LN_{\%} \times LN_x)}{(HN_{\%} \times HN_T) + (MN_{\%} \times MN_T) + (LN_{\%} \times LN_T)}$$

Where,
x=Item (x) of Table B4
c=Item (c) of Table B1
HN_%=85% from Table B3
HN_T=512 acres from Table B3
MN_%=10% from Table B3
MN_T=6,736 acres from Table B3
LN_%=5% from Table B3
LN_T=27,263 acres from Table B3

(3) A Flat Fee of \$100,000 is applied to each Party to recognize a equal weighting portion of the study beyond the formula in Footnote (2). County of Los Angeles Unincorporated opted to cover the \$100,000 Flat Fee for Los Angeles County Flood Control District.

Table B5: Fiscal Year Invoicing for Nutrient Special Study

Party	Fiscal Year 2019-2020 ⁽³⁾	Fiscal Year 2020-2021 ⁽³⁾	Fiscal Year 2021-2022 ⁽³⁾	Total Cost Share
City of Agoura Hills	\$53,720.38	\$107,440.76	\$107,440.76	\$268,601.89
City of Calabasas	\$51,827.96	\$103,655.92	\$103,655.92	\$259,139.80
City of Hidden Hills	\$21,845.37	\$43,690.73	\$43,690.73	\$109,226.83
City of Westlake Village	\$40,782.42	\$81,564.84	\$81,564.84	\$203,912.10
County of Los Angeles Unincorporated	\$849,881.88	-	-	\$849,881.88
Los Angeles County Flood Control District ⁽¹⁾	\$17,797.50	\$35,595.00	\$35,595.00	\$88,987.50
Total	\$1,035,855.50	\$371,947.25	\$371,947.25	\$1,779,750.00

EXHIBIT C

**Malibu Creek Watershed CIMP
Implementation Scope of Work**

Table 1. Malibu CIMP Extension Budget Summary and Explanation

Task		Original Total	Additional 4 Years	7 Year Total	Year 4	Year 5	Year 6	Year 7
1.0	Project Management, Coordination, & Meetings	\$ 100,621	\$ 162,394	\$ 263,015	Updated budget to reflect increased costs related to project management, coordination, and conference calls and meetings that occur more frequently than previously scoped.			
2.0	Health and Safety Plan	\$ 5,371	\$ -	\$ 5,371	No budget included as no changes are expected.			
3.0	Quality Assurance Project Plan	\$ 6,420	\$ 5,577	\$ 11,997	No budget included.	No budget included.	Included costs to update QAPP based on updated CIMP.	No budget included.
4.0	CIMP Monitoring	\$ 767,001	\$ 1,034,032	\$ 1,801,033	Included budget to complete installation of SW outfall sites Potrero Valley Creek (TRUNFOC-095) and Medea Creek (LNDRC-074).	Included potential costs associated with upcoming MS4 Permit: 1. Recompletion of Table E-2 analysis (Assuming same 3 sites as last time) 2. New monitoring related to the U.S. EPA-Established Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments.	Included potential costs associated with upcoming MS4 Permit: 1. Recompletion of NSW outfall requirements (Source ID plan) 2. Continue monitoring related to Sedimentation and Nutrients TMDL	Included potential costs associated with upcoming MS4 Permit: 1. Continue recompletion of NSW outfall requirements (Source ID) 2. Continue monitoring related to Sedimentation and Nutrients TMDL
5.0	Laboratory Analysis	\$ 229,129	\$ 473,964	\$ 703,094	Additional budget included to cover the three new dry weather toxicity sites that were added in Year 3.			
6.0	Data Management and QA/QC	\$ 79,904	\$ 100,179	\$ 180,084	Updated budget to reflect costs of effort in Years 1 through 3.			
7.0	Reporting	\$ 335,188	\$ 483,087	\$ 818,274	Costs reflect the level of effort required to meet the minimum reporting requirements in Years 1 through 3 as well as the additional support provided that was not originally scoped (e.g., development of the Report of Waste Discharge).			
8.0	CIMP Update		\$ 19,108	\$ 19,108	No budget included.	CIMP updates expected to be required to address Sedimentation and Nutrients TMDL and address potential update requirements as part of the upcoming MS4 Permit.	No budget included.	No budget included.
9.0	EWMP Update		\$ 450,031	\$ 450,031	Current MS4 Permit requires EWMP and RAA update in June 2021 (end of Year 5). Included budget to conduct extensive revisions to the EWMP to update the control measure menu based on the WMG's updated preferences, an evaluation of a critical factors that affect compliance, and develop information to strategically influence TMDL schedules through affordability analyses and alternative schedules. Prior to initiating work, a detailed scope and budget will be developed for review, revision, and approval by the WMG.		No budget included.	No budget included.
Total >>>>		\$ 1,523,635	\$ 2,728,372	\$ 4,252,006				
Total With Mark Up on Subcontract Services Assuming 10% >>>>		\$ 1,628,564	\$ 2,922,949	\$ 4,551,513				

EXHIBIT D

**Malibu Creek Watershed
Nutrient Special Study
Scope of Work**

Malibu Creek Special Study Scope of Work

Purpose

Develop the necessary technical and regulatory information to support MS4 Permittees in the Malibu Creek Watershed in complying with nutrient, sediment and benthic community related TMDLs in a reasonable manner that results in attainable environmental outcomes. The information developed through the Special Study would be used to revise TMDLs, MS4 Permit requirements, and/or support alternative regulatory approaches.

Approach

The following outlines the general approach to framing and conducting the Special Study:

- Identify the expected environmental outcomes resulting from potential TMDL implementation actions to evaluate the attainability of existing TMDL requirements.
- Design and implement study (e.g., monitoring and modeling) elements to enhance ability to predict environmental outcomes and enable the utilization of regulatory approach(es) that can yield reasonable and attainable environmental outcomes.
- Develop technical and regulatory information to support potential revisions to the TMDL, MS4 Permit requirements, or alternative regulatory approaches.

Background

USEPA adopted nutrient-related TMDLs in the Malibu Creek watershed in 2003 and 2013. These TMDLs established water quality targets, wasteload allocations (WLAs) and load allocations (LAs) to address water quality impairments related to algal growth, dissolved oxygen, benthic community impacts and sedimentation. The Los Angeles Regional Water Quality Control Board (Regional Water Board) incorporated the 2003 TMDL WLAs into the current MS4 Permit and adopted an Implementation Plan for the 2013 TMDL into the Basin Plan. It is expected that the 2013 TMDL WLAs will be incorporated into a reissued MS4 Permit expected in 2019. Neither of the TMDLs or supporting information directly assessed the attainability of TMDL targets or whether attainment of targets would resolve the impairments that were the basis for 303(d) listings. The performance of studies to address these attainability issues are appropriate under applicable USEPA regulations and would be consistent with SWRCB policy concepts related to nutrient and benthic community impairments, which are currently under development.

Under the Clean Water Act, enforceable water quality criteria are adopted to protect designated beneficial uses. Criteria may be either numeric or narrative. The combination of enforceable criteria and designated uses, together with an antidegradation policy, are defined to be water quality standards (WQS). Uses specified in Section 101(a)(2) of the Act include “uses that provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, as well as for the protection of human health when consuming fish, shellfish and other aquatic life. A subcategory of a use specified in Section 101(a)(2) of the Act refers to any use that reflects the subdivision of uses...into smaller, more homogeneous groups for the purposes of reducing variability within the group.”

CWA section 101(a)(2) sets a water quality goal to provide for the protection of fish, shellfish, and wildlife and for recreation in and on the water wherever attainable. EPA's WQS regulation at 40 CFR 131.10(j) and (k) interprets and implements these provisions through requirements that WQS protect these uses unless states and authorized tribes show these uses are unattainable through a use attainability analysis (UAA) consistent with EPA's regulation. This effectively creates a rebuttable presumption of attainability.

Recent (August 2015) USEPA WQS regulations (40 CFR 131, EPA Docket No. EPA-HQ-OW-2010-0606) require that the Highest Attainable Use (HAU) be identified and protected. The SWRCB's Science Advisory Panel for the Biostimulatory Policy for wadeable inland surface waters has recommended consideration of an approach that considers various levels of use that can be attained as a way to deal with water bodies in California that will not ever be able to achieve pristine, "reference water body" conditions in terms of algal concentrations, biological condition, and/or water quality condition. [See "Report from June 2015 Meeting of the Nutrient Science Advisory Panel for California Wadeable Streams"] Application of a structured scientific analysis is under consideration to be incorporated into the proposed watershed approach for the SWRCB's Biostimulatory Policy to enable and promote the identification of attainable uses at the watershed scale.

In NPDES permits for MS4s, the concept of a Natural Source Exclusion exists to allow relief from regulatory requirements in cases where it is demonstrated that natural sources prevent attainment. In the Malibu Creek watershed, application of this exclusion exists as a possible regulatory option due to natural levels of nutrients (phosphorus and nitrogen) in native soils.

Range of Future Actions Associated with TMDL Implementation and Environmental Outcomes

The Regional Water Board has developed an Implementation Plan for the Malibu Creek TMDLs. The plan states the targets and the allocations that are required to be achieved for various sources in the watershed. Non-structural and engineered solutions are incorporated into the Malibu Creek Watershed Enhanced Watershed Management Program (EWMP) to attain the WLAs and targets. However, the costs for implementing those solutions, the schedules to meet the TMDL requirements, and the attainability of the WLAs and targets reduce the likelihood of compliance. The following range of actions may be required for MS4s in attempting to meet targets and allocations:

- No Additional Action beyond existing NPDES/EWMP requirements
- Increased Efforts to implement Effective Prohibition of urban runoff in Dry Season
- Non-structural solutions
- Engineered Solutions
- Holistic Watershed Restoration efforts

The following range of future environmental outcomes may occur as a result of the above described steps taken to comply with the current TMDL implementation plan:

- Achieve all TMDL targets
- Achieve all allocations but fail to achieve all targets

- Fail to achieve targets and allocations
- Maintain current ambient conditions

Background concentrations of nutrients and other environmental factors beyond the control of MS4s and other members of the regulated community could result in significant investments that do not result in attainment of desired outcomes.

Future Regulatory Options

The following outlines future regulatory options:

- Option 1 (status quo) - Execute Existing TMDL Implementation Plan – modify TMDL in the future to be more stringent if actions taken do not achieve benthic community, algal and sedimentation targets (following the approach used in 2013 TMDL and consistent with 1991 USEPA TMDL guidance). Note that the 2013 TMDL incorporated revised nutrient targets that were more stringent because the targets in the 2003 TMDL did not result in the expected outcomes.
- Option 2 - Modify the TMDL (or utilize another regulatory mechanism) to reflect the results of a holistic watershed analysis that focuses on reasonable and attainable regulatory goals and environmental outcomes.

Option 1 does not involve additional study at this time. Permittee’s implementation resources would be devoted to prescribed implementation actions under the existing TMDL requirements.

The proposed approach under Option 2 requires stakeholder involvement, watershed-scale assessment of nutrient sources and transformation processes, and development of information and tools to establish the relationship between management options and attainable outcomes.

The specific actions to be taken under the proposed watershed approach include:

- (1) Documentation of a Malibu Creek-specific conceptual model of biostimulatory and biointegrity processes.
- (2) Quantification of important physical, chemical and biological factors influencing biostimulatory processes and biointegrity, including nutrient source loadings (MS4s, POTW, natural sources, on-site wastewater systems, agriculture, etc.), flow, temperature, solar irradiance, etc. through either watershed-specific data synthesis or additional monitoring in the watershed,
- (3) Refinement and use of available Malibu Creek modeling tools (i.e., EWMP hydrology, water quality, and BMP models) to characterize watershed-specific responses to nutrient load management and other management actions and the associated MS4 implementation costs.
- (4) Development of a range of possible management scenarios to control ambient nutrient levels and other important non-nutrient factors.
- (5) Use of available Malibu Creek modeling tools to evaluate the ability to impact aquatic life and recreational beneficial uses through implementation of different management scenarios.
- (6) Identification of highest attainable uses based on consideration of the six factors outlined under 40 CFR 131.10(g) using the information developed through completion of the first five actions.

Key to the above is attention on the six factors identified by USEPA in 40 CFR 131.10(g), which are as follows:

1. Naturally occurring pollutant concentrations prevent the attainment of the use; or
2. Natural, ephemeral, intermittent or low-flow conditions or water levels prevent the attainment of the use, unless these conditions can be compensated for by a sufficient volume of effluent discharge without violating state conservation requirements to enable uses to be met; or
3. Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied, or would cause more environmental damage to correct than to leave in place; or
4. Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the use; or
5. Physical conditions related to the natural features of the water body preclude attainment of aquatic life protection uses; or
6. Controls more stringent than those requires by Sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

Studies to address one or more of these six factors would provide essential information in support of one or more of the following regulatory pathways:

- TMDL Amendment – amending the TMDL to reflect reasonably attainable conditions given site-specific characteristics of the Watershed.
- Natural Source Exclusion – demonstrate that natural sources will cause ambient levels that exceed current TMDL (and potential future Statewide Policy) biostimulatory and biointegrity targets.
- Water Quality Standards Variance – provide regulatory relief in the form of a variance, which suspends associated NPDES permit requirements based on a demonstration that the TMDL is not attainable in the near-term given site-specific characteristics of the Watershed.

Scope of Work

The following outlines a proposed Special Study that will support Permittees in implementing Option 2 as described above using a phased approach. Each phase will require internal engagement with MCW EWMP Group members, external engagement with Regional Water Board staff, and the development of multiple deliverables. All draft and final deliverables will be circulated to the MCW EWMP Group for comment and revision prior to external distribution.

- **Phase 1: Work Plan Development**

Task 1.1. Regulatory Agency Engagement: Constructive and consistent engagement with regulatory agencies is key to the development and implementation of an effective special study that will lead to positive regulatory outcomes. As such, development of an overall special study work plan will include engaging the Regional Water Board and potentially the SWRCB and USEPA. The Regional Water Board will be engaged to gain input on the purpose of the special study, the scientific and regulatory approach, and timeline. In the event such engagement is not fruitful, we will explore alternatives for work plan development in a timeframe that will allow for the consideration of the results before the 2021 TMDL deadline.

Task 1.2. Literature Review and Data Synthesis Summary: Significant work has been conducted by various parties to characterize conditions in the Watershed relevant to nutrient and benthic community impairments. A comprehensive literature review and synthesis of Watershed specific and relevant non-Watershed studies will be conducted. This effort will support a more comprehensive understanding of the Watershed and ensure resources are focused on obtaining new information and avoid duplicating previously conducted work. The results of this effort will be summarized in a draft memorandum that will be revised and finalized to address comments received.

Task 1.3. Develop Draft and Final Study Work Plan: Based on the results of Task 1.2 and input from Regional Water Board staff and other regulatory agencies as part of Task 1.1, a draft Study Work Plan will be developed to serve as an overall guide for the study. The Work Plan will outline the purpose of the special study, overall approach to the efforts, and an associated timeline. Detailed approaches related to modeling scenarios and monitoring will not be included at this stage as they will be developed during Phase 2 as described in detail below. A draft Study Work Plan will be developed and revised based on comments and finalized.

- **Phase 2: Work Plan Implementation**

Task 2.1. Stakeholder and Regulatory Agency Coordination: A Stakeholder Advisory Group (SAG) that includes a Regional Water Board staff person will be developed. The SAG will be used to develop the management scenarios to be modeled, evaluate the results of Task 2.3 (Regulatory Assessment) to select the regulatory approach and provide input on the monitoring and modeling scenarios for the remaining tasks.

Task 2.2. Modeling: Modeling will be conducted to evaluate a range of management scenarios developed in coordination with the SAG using currently available modeling tools (i.e., EWMP hydrology, water quality, and BMP models). The approach will include (a) development of management questions to be addressed through the modeling effort, (b) development of candidate management actions which will comprise the management scenarios to be modeled, (c) development of watershed management scenarios, and (d) conducting the modeling.

Management questions to be addressed through the modeling effort will include (1) determination of the impacts of specific management actions on water quality and resulting biological outcomes and (2) determination of a range of achievable water quality and outcomes that may result from a range of management measures, including an assessment of the ability to achieve established or proposed targets. Development of information needed to allow performance of California Water Section 13241(c) and 13242 analyses shall be considered. Key considerations will be whether actions can be effectively modeled using existing modeling tools and thereby linked to water quality or biological change in the watershed.

Using the candidate management actions, management scenarios will be designed to address management questions and to isolate the effectiveness of specific management actions. A book-ending approach will be implemented by designing scenarios that reflect planned, plausible and

extreme management actions. Implementation costs associated with the selected modeling scenarios will be developed and used, along with model results, to assess attainability in the context of the six factors identified in 40 CFR 131.10(g).

Task 2.3. Regulatory Assessment: After modeling the scenarios, the results will be used to evaluate whether consideration of a Natural Source Exclusion (NSE), Water Quality Standards Variance (Variance), or TMDL modifications based on the modeling results and/or science developed for the Statewide Biostimulatory/Biointegrity Plan would be appropriate based on the initial modeling results. The regulatory assessment will be discussed with the SAG to identify the preferred approach. Once a preferred approach is identified, the regulatory steps and information needs to pursue the selected approach will be developed. Tasks 2.4 through 2.6 are potential tasks that could be necessary to implement the selected approach.

Task 2.4. Assess Need for Additional Modeling and/or Monitoring to Support Selected Approach: If an NSE or Variance is selected as the preferred approach, sensitivity analyses will be performed to determine the need for additional data collection to support a refined modeling effort. If a TMDL modification is the preferred approach, the need for additional monitoring and modeling to inform development of alternative targets or allocations will be assessed. The additional modeling could include development of a model for Malibu Lagoon to better assess the impacts of wet weather discharges and the need for wet weather targets and allocations to protect the Lagoon. If no additional modeling or monitoring is needed, efforts would move on to the Regulatory Synthesis (Task 2.7).

Task 2.5. Monitoring: Under this task, a monitoring plan will be developed and implemented to collect additional data needed to support the modeling and regulatory efforts. Monitoring could include, but is not limited to, conventional constituents and nutrients, flow, algal percent cover, algal taxonomy and biomass, physical factors that control the growth of algae (stream bank dimensions, canopy cover, and pebble count; and bioassessment (both macroinvertebrate and algal indices)).

Task 2.6. Additional Modeling: If the NSE or Variance is the selected approach, run range of management scenarios and identify associated costs using refined models. If the TMDL modification is selected, run model scenarios to assess impacts in the Lagoon and/or to revise the targets and allocations based on the attainability analysis results from Task 3.

Task 2.7. Regulatory Synthesis: Use information developed above to develop a regulatory proposal to implement either amend the TMDL, apply an NSE, or adopt a Variance. Completion of efforts related to the selected regulatory proposal would be conducted as part of Phase 3 as described below.

Task 2.8. Develop Draft and Final Special Study Report: A draft Special Study Report capturing the results of the Phase 2 efforts will be developed and revised based on comments and finalized.

- **Phase 3: TMDL Revisions or Regulatory Alternative**

Task 3.1: TMDL Revisions: Based on the outcome of Phase 2, documentation to support regulatory revisions will be developed. A range of potential documents could be necessary depending on the regulatory proposal selected in Phase 2. If a TMDL revision is the selected regulatory proposal, a TMDL technical report addressing major revisions to the TMDL (e.g., targets, sources, linkage analysis, allocations, and implementation) will be developed for review and comment and finalized. Additionally, draft Basin Plan amendment language could be developed, if so desired.

Task 3.2: Documentation to Support Alternative Regulatory Revisions: In the event a TMDL revision is not the selected regulatory proposal, documentation to support application of an NSE outside of the TMDL or a Variance will be developed. The documentation will be in the form of a draft report that will be revised based on comments and finalized.

Task 3.3: Support through Adoption of Regulatory Revisions: Once the selected regulatory proposal documentation has been developed, the Regional Water Board will need to act on the information through a publicly noticed hearing. Support will include review of and comment on administrative and tentative resolutions, Basin Plan amendments, and/or NPDES Permits, the development of testimony for an adoption hearing, and participation in an adoption hearing.

Budget Estimate and Schedule

Table 1 outlines a potential schedule to complete the tasks described above. The schedule may vary to meet additional Malibu Creek Watershed EWMP Group or Regional Water Board requirements, which include CEQA, state peer review, 45-day comment period and placement on the Regional Water Board agenda. Table 2 presents a planning level cost estimate to complete the tasks described above. Note that costs are provided as a range as the desired level of internal and external engagement needs to be discussed with the Group and the modeling, monitoring, and regulatory documentation related costs will be dependent on the outcome of preceding efforts.

Table 1. Estimated Time Frame to Implement Malibu Creek Watershed Nutrient and Benthic Community TMDL Special Study

	Task	Number of Months to Complete Task	Time Frame to Complete Task Assuming a Sept 1, 2018 Start Date
Phase 1	Develop Study Work Plan	8	Sept 2018 – Apr 2018
Phase 2	Implement Study Work Plan	24	Sept 2018 – Sept 2020 ¹
Phase 3	TMDL Revisions or Regulatory Alternative	8	Oct 2020 – May 2021

¹ Includes time for RB and TAC review can take up a large portion of the schedule.

Table 2. Planning Level Cost Estimate to Implement Malibu Creek Watershed Nutrient and Benthic Community TMDL Special Study

Task		Range of Costs ¹	
Phase 1	Develop Study Work Plan	\$85,000	\$105,000
Phase 2	Implement Study Work Plan	\$500,000	\$1,275,000
Phase 3	TMDL Revisions or Regulatory Alternative	\$100,000	\$265,000
	Project Management	\$30,000	\$50,000
	Total	\$715,000	\$1,695,000

1 Costs are provided as a range as the desired level of internal and external engagement needs to be discussed with the Group and the modeling, monitoring, and regulatory documentation related costs will be dependent on the outcome of preceding efforts. The high-end range of costs associated with Phase 2 assume that additional modeling and monitoring will need to be completed for the Special Study. The high-end range of costs associated with Phase 3 assume that a full TMDL revision will be needed and supported through Regional Water Board adoption process.