

## REPORT TO CITY COUNCIL

**DATE: JUNE 9, 2021**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: NATHAN HAMBURGER, CITY MANAGER**

**BY: JESSICA FORTE, PUBLIC WORKS DIRECTOR/CITY ENGINEER**

**SUBJECT: REQUEST TO APPROVE THE FIRST AMENDMENT TO 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**

---

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 (County), Los Angeles Flood Control District (LAFCD), 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 define fair share costs 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 the City of Agoura Hills (City) would administer the compliance monitoring program on behalf of the MCW EWMP group.

On October 23, 2019, the City Council approved a new MOU which included estimated costs for monitoring over the next four (4) years. In addition to the EWMP and CIMP program implementation, the MOU included a special study that considered 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 was based on jurisdictional area. The Nutrients Study cost-share was based on 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.

After the execution of the MOU, an error in the calculation of open space land use was discovered. Specifically, the Geographic Information System (GIS) mapping of the land use categories inadvertently assigned portions of Federal land uses to the County, which inflated their cost-share incorrectly.

The First Amendment to the MOU corrects the error by redistributing the overall costs between agencies based on the corrected land use categorizations. While the original estimated costs of \$3 million for the CIMP and \$1.7 million for the Nutrient Study remain the same, the revised calculations result in a decrease fair share for the County, and an increase to the other agencies. This adjustment excludes LACFD, which maintains a fixed 5% cost contribution per the MOU. The revised 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	\$324,003.66	\$325,871.40
City of Agoura Hills	5,178	15.7%	\$99,765.40	\$145,305.34	\$102,527.63	\$110,003.24
City of Calabasas	4,941	15.0%	\$94,567.21	\$137,734.32	\$98,466.75	\$105,888.64
City of Westlake Village	3,540	10.7%	\$66,317.00	\$96,588.74	\$71,982.99	\$77,955.94
City of Hidden Hills	105	0.3%	\$2,139.26	\$3,115.77	\$1,962.86	\$2,061.40
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	(\$24,672.57)	\$825,209.31
City of Agoura Hills	\$53,720.38	\$107,440.76	\$117,434.77	\$278,595.91
City of Calabasas	\$51,827.96	\$103,655.92	\$114,119.50	\$269,603.38
City of Westlake Village	\$40,782.42	\$81,564.84	\$85,666.19	\$208,013.45
City of Hidden Hills	\$21,845.37	\$43,690.73	\$43,804.36	\$109,340.46
LA County Flood Control District	\$17,797.50	\$35,595.00	\$35,595.00	\$88,987.50

The estimated cost increase to the City is \$36,024.38 for the CIMP, and \$9,994.02 for the Nutrient Study, resulting in a total cost adjustment of \$46,018.40. With the adjustment, the City’s total estimated fair share for the MOU increases from \$690,179.12 to \$736,197.52. It should be noted the costs listed above include a 10% contingency, and

the 5% management fee paid to the City for managing the compliance monitoring program.

The City's fair share for Fiscal Year 2019-20 and 2020-21 remain the same as previously approved in the original MOU. The corrected CIMP costs have been accounted for in the proposed Fiscal Year 2021-22 and 2022-23 stormwater budgets. The City's portion of the Nutrient Study, which is being paid entirely with Measure W (Local) Funds, has been accounted for in the proposed Fiscal Year 2021-22 Budget pending adoption by the City Council.

The proposed First Amendment to the MOU has been reviewed and approved as to form by the City Attorney.

### **RECOMMENDATION**

Staff respectfully recommends the City Council approve the First Amendment to 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.

Attachment: First Amendment to Memorandum of Understanding

**FIRST AMENDMENT TO THE 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 FIRST AMENDMENT (“FIRST AMENDMENT”), 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 PARTIES entered into the original Memorandum of Understanding (“AGREEMENT” or “MOU”) on May 14, 2020 regarding the administration and cost sharing for implementing the Coordinated Integrated Monitoring Program (“CIMP”) and necessary reports for the Malibu Creek Watershed, and the Enhanced Watershed Management Plan (“EWMP”) described 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 enter into this AGREEMENT 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; and

WHEREAS, the PARTIES have agreed to enter into this AGREEMENT to share costs in the implementation of the NUTRIENT SPECIAL STUDY in the Malibu Creek Watershed as set forth in Table B4 of Exhibit B; and

WHEREAS, an error in the calculation of open space (“VACANT”) land under the jurisdiction of state parks was mistakenly assigned to the PARTIES in the analysis and this FIRST AMENDMENT corrects the land area totals used for the CIMP and NUTRIENT

SPECIAL STUDY cost-sharing formulas in Exhibit "B" of the AGREEMENT, which caused a redistribution of cost allocation per PARTY.

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

1. **Exhibit "B"** to the Agreement is hereby amended by replacing said **Exhibit "B"** in its entirety with a new **Exhibit "B"** as set forth in **Attachment "A"** to this Amendment, which is attached hereto and incorporated herein as though set forth in full.

2. Except for the changes specifically set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES hereto have caused this FIRST AMENDMENT to be executed by their duly authorized representatives and affixed as of the date of signature of the PARTIES:

//  
//  
//

**COUNTY OF LOS ANGELES**

By \_\_\_\_\_  
Mark Pestrella, Director of Public Works

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

RODRIGO A. CASTRO-SILVA  
County Counsel

By \_\_\_\_\_  
Deputy

\_\_\_\_\_  
Date

**LOS ANGELES COUNTY FLOOD CONTROL DISTRICT**

By \_\_\_\_\_  
Mark Pestrella, Chief Engineer

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

RODRIGO A. CASTRO-SILVA  
County Counsel

By \_\_\_\_\_  
Deputy

\_\_\_\_\_  
Date

CITY OF AGOURA HILLS

By \_\_\_\_\_  
Denis Weber, 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 \_\_\_\_\_  
James R. Bozajian, 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 \_\_\_\_\_  
Stuart E. Siegel, 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 \_\_\_\_\_  
Susan McSweeney, Mayor

\_\_\_\_\_  
Date

ATTEST:

By \_\_\_\_\_  
Josephine Wilson, Interim City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

By \_\_\_\_\_  
Terence Boga, City Attorney

\_\_\_\_\_  
Date

## ATTACHMENT "A"

Effective as of June 1, 2021

### 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 <sup>(1)</sup>	(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 <sup>(2)</sup>	Fiscal Year 2019-2020 <sup>(3)</sup>	Fiscal Year 2020-2021 <sup>(3)</sup>	Fiscal Year 2021-2022 <sup>(3)</sup>	Fiscal Year 2022-2023 <sup>(3)</sup>	Total Cost
City of Agoura Hills	5,178	15.7%	\$99,765.40	\$145,305.34	\$102,527.63	\$110,003.24	\$457,601.61
City of Calabasas	4,941	15.0%	\$94,567.21	\$137,734.32	\$98,466.75	\$105,888.64	\$436,656.93
City of Hidden Hills	105	0.3%	\$2,139.26	\$3,115.77	\$1,962.86	\$2,061.40	\$9,279.29
City of Westlake Village	3,540	10.7%	\$66,317.00	\$96,588.74	\$71,982.99	\$77,955.94	\$312,844.67
County of Los Angeles Unincorporated	19,228	58.3%	\$427,191.86	\$622,192.21	\$324,003.66	\$325,871.40	\$1,699,259.13
Los Angeles County Flood Control District <sup>(1)</sup>	-	-	\$36,314.78	\$52,891.39	\$31,523.36	\$32,725.30	\$153,454.82
<b>Totals</b>	<b>32,992</b>	<b>100%</b>	<b>\$726,295.50</b>	<b>\$1,057,827.75</b>	<b>\$630,467.25</b>	<b>\$654,505.95</b>	<b>\$3,069,096.45</b>

(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. The FIRST AMENDMENT corrected the land area totals after FY19/20 and FY20/21 had been invoiced. The difference between the already invoiced amount and the corrected amount for FY19/20 is recognized in FY21/22, and FY20/21 is recognized in FY22/23.

**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 <sup>(1)</sup>	(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 <sup>(1)</sup>	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
Multi-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	2495	48.2	3735	75.6	30	28.6	1735	49.0	16194	84.2
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 MN	% Total	Acres	% of LN	% Total	Acres	% of LN	% Total	Acres	% of LN	% Total
City of Agoura Hills	25	4.9	0.1	2,235	33.2	6.8	2,904	11.4	8.9									
City of Calabasas	99	19.3	0.3	870	12.9	2.7	3,972	15.6	12.1									
City of Hidden Hills	1	0.2	0.0	74	1.1	0.2	30	0.1	0.1									
City of Westlake Village	-	0.0	0.0	1,293	19.2	4.0	2,042	8.0	6.2									
County of Los Angeles Unincorporated	387	75.6	1.2	2,264	33.6	6.9	16,532	64.9	50.5									
Los Angeles County Flood Control District	-	-	-	-	-	-	-	-	-									
<b>Total</b>	<b>512</b>	<b>100</b>	<b>1.6</b>	<b>6,736</b>	<b>100</b>	<b>20.6</b>	<b>25,480</b>	<b>100</b>	<b>77.8</b>									

**Table B4: Party Cost Share Allocation for Nutrient Special Study**

Party	(x)	Weighted Formula <sup>(2)</sup>	Flat Fee <sup>(3)</sup>	Subtotal	Management Fee	Total Cost Share
City of Agoura Hills	1	\$165,329.44	\$100,000.00	\$265,329.44	\$13,266.47	\$278,595.91
City of Calabasas	2	\$156,765.12	\$100,000.00	\$256,765.12	\$12,838.26	\$269,603.38
City of Hidden Hills	3	\$4,133.77	\$100,000.00	\$104,133.77	\$5,206.69	\$109,340.45
City of Westlake Village	4	\$98,108.05	\$100,000.00	\$198,108.05	\$9,905.40	\$208,013.45
County of Los Angeles Unincorporated	5	\$585,913.63	\$200,000.00	\$785,913.63	\$39,295.68	\$825,209.31
Los Angeles County Flood Control District <sup>(1)</sup>	-		\$84,750.00	\$84,750.00	\$4,237.50	\$88,987.50
<b>Totals</b>		<b>\$1,010,250.00</b>	<b>\$684,750.00</b>	<b>\$1,695,000.00</b>	<b>\$84,750</b>	<b>\$1,779,750.00</b>

(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 an 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 <sup>(3)</sup>	Fiscal Year 2020-2021 <sup>(3)</sup>	Fiscal Year 2021-2022 <sup>(3)</sup>	Total Cost Share
City of Agoura Hills	\$53,720.38	\$107,440.76	\$117,434.77	\$278,595.91
City of Calabasas	\$51,827.96	\$103,655.92	\$114,119.50	\$269,603.38
City of Hidden Hills	\$21,845.37	\$43,690.73	\$43,804.36	\$109,340.45
City of Westlake Village	\$40,782.42	\$81,564.84	\$85,666.19	\$208,013.45
County of Los Angeles Unincorporated	\$849,881.88	-	(\$24,672.57)	\$825,209.31
Los Angeles County Flood Control District <sup>(1)</sup>	\$17,797.50	\$35,595.00	\$35,595.00	\$88,987.50
<b>Total</b>	<b>\$1,035,855.50</b>	<b>\$371,947.25</b>	<b>\$371,947.25</b>	<b>\$1,779,750.00</b>