



DONALD L. WOLFE, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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IN REPLY PLEASE
REFER TO FILE: **WM-7**

August 18, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**SANTA MONICA BAY BEACHES WET-WEATHER BACTERIA
TOTAL MAXIMUM DAILY LOAD IMPLEMENTATION PLAN DEVELOPMENT
AGREEMENT FOR JURISDICTIONAL GROUPS 1 AND 4
SUPERVISORIAL DISTRICT 3
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Chair of the Board to execute the enclosed Agreement between the City of Malibu, the State of California Department of Transportation (Caltrans), and the County of Los Angeles (acting for itself and on behalf of the Los Angeles County Flood Control District) to provide a cooperative financial arrangement and accept reimbursement of funds for the preparation of the Santa Monica Bay Beaches Wet-Weather Bacteria Total Maximum Daily Load (TMDL) Implementation Plan for Jurisdictional Groups 1 and 4. The County will receive a maximum reimbursement of \$183,425 under this Agreement.
2. Authorize the Director of Public Works to implement the Agreement.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Santa Monica Bay Beaches Wet-Weather Bacteria TMDL became effective on July 15, 2003. The TMDL designates the County of Los Angeles, the Los Angeles County Flood Control District, and the other agencies with jurisdiction over the watersheds that drain to the Santa Monica Bay as responsible agencies. The TMDL requires the submittal of an implementation plan for complying with the wet-weather portion of the TMDL to the Los Angeles Regional Water Quality Control Board (Regional Board). The County, City of Malibu, and Caltrans proposed to jointly develop an implementation plan for the rural subwatersheds in the North Santa Monica Bay, defined in the TMDL as Jurisdictions 1 and 4.

On June 29, 2004, your Board authorized the Chief Engineer of the Flood Control District to execute a Consultant Services Agreement to prepare the Santa Monica Bay Beaches Wet-Weather Bacteria TMDL Implementation Plan for Jurisdictional Groups 1 and 4. Subsequently, the County, City of Malibu, and Caltrans cooperatively developed the enclosed Agreement to share the monetary costs of the implementation plan. Under this Agreement, the County will receive a maximum reimbursement of \$183,425.

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goals of Organizational Effectiveness and Fiscal Responsibility by cost sharing with other agencies and utilizing a collaborative effort to produce the implementation plan.

FISCAL IMPACT/FINANCING

Under the terms of this Agreement, the Flood Control District Fund will receive a maximum reimbursement of \$173,937.50 from the City of Malibu and \$9,487.50 from Caltrans. The Flood Control District will submit the invoices to the City of Malibu and Caltrans in Fiscal Year 2005-06.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The enclosed Agreement has been executed by the City of Malibu and Caltrans and has been approved as to form by County Counsel.

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ENVIRONMENTAL DOCUMENTATION

Execution of the enclosed Agreement is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15262 of the State CEQA guidelines. Any future project that may be proposed for construction or implementation will undergo the appropriate environmental review.

CONTRACTING PROCESS

On June 29, 2004, your Board approved the contracting process associated with this Agreement.

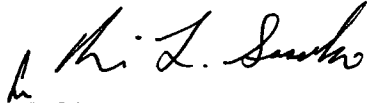
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services or projects.

CONCLUSION

Please return seven original copies of the Agreement together with one adopted copy of this letter to Public Works. The copy marked COUNTY ORIGINAL is for your files.

Respectfully submitted,



DONALD L. WOLFE
Director of Public Works

NTS:ad/kk

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Enc.

cc: Chief Administrative Office
County Counsel

A G R E E M E N T

This **AGREEMENT** is made and entered into by and between the CITY OF MALIBU, a municipal corporation in the County of Los Angeles ("**CITY**"), the STATE OF CALIFORNIA, through its Department of Transportation ("**CALTRANS**"), and the COUNTY OF LOS ANGELES, a political subdivision of the State of California ("**COUNTY**").

W I T N E S S E T H

WHEREAS, COUNTY is administering all matters for the Los Angeles County Flood Control District ("**DISTRICT**"), pursuant to Section 56_3/4 of the **COUNTY's** Charter and in accordance with an agreement approved on December 26, 1984, between **COUNTY** and **DISTRICT**; and

WHEREAS, on March 19, 2003, the State Water Resources Control Board approved a resolution by the California Regional Water Quality Control Board, Los Angeles Region ("**RWQCB**"), Resolution No. 2002-022, establishing a Total Maximum Daily Load for bacteria during wet weather at Santa Monica Bay beaches ("**WET-WEATHER TMDL**"); and

WHEREAS, in addition to establishing water quality standards for Santa Monica Bay beaches, Resolution No. 2002-022 also: (1) divided the Santa Monica Bay watershed into seven jurisdictional groups; (2) assigned responsible jurisdictions and agencies to the seven jurisdictional groups; and (3) identified a primary jurisdiction for each jurisdictional group; and

WHEREAS, Resolution No. 2002-022 defines "primary jurisdiction" as the jurisdiction comprising greater than fifty percent (50%) of the land area in a subwatershed; and

WHEREAS, Resolution No. 2002-022 defines "responsible jurisdictions and agencies" as: (1) local agencies that are responsible for discharges from a publicly-owned treatment works to the Santa Monica Bay watershed or directly to the Bay; (2) local agencies that are permittees or co-permittees on a municipal storm water permit; (3) local or State agencies that have jurisdiction over a beach adjacent to Santa Monica Bay; and (4) the California Department of Transportation pursuant to its stormwater permit; and

WHEREAS, each of the seven jurisdictional groups is comprised of associated subwatersheds and responsible jurisdictions and agencies. Jurisdictional Group 1 consists of 16 subwatersheds and Jurisdictional Group 4 consists of one subwatershed, as shown on Exhibit A, and Jurisdictional Groups 1 and 4 together include the following responsible jurisdictions and agencies: **CITY, CALTRANS, COUNTY**, the City of Los Angeles, the City of Calabasas, the County of Ventura, the County of Ventura Watershed Protection District, and the California Department of Parks and Recreation; and

WHEREAS, COUNTY is the primary jurisdiction for Jurisdictional Group 1 and **CITY** is the primary jurisdiction for Jurisdictional Group 4; and

WHEREAS, the **WET-WEATHER TMDL** became effective on July 15, 2003; and

WHEREAS, the parties recognize that the **WET-WEATHER TMDL** is not self-executing and has not been incorporated into the National Pollutant Discharge Elimination System Permit for Waste Discharge Requirements For Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles, and the Incorporated Cities Therein Except the City of Long Beach, dated December 13, 2001, in the manner required by law to be enforceable; and

WHEREAS, the parties agree to combine their resources and efforts to voluntarily develop a combined **WET-WEATHER TMDL** implementation plan for Jurisdictional Groups 1 and 4 ("**IMPLEMENTATION PLAN**") and to submit a draft **IMPLEMENTATION PLAN** to the **RWQCB** no later than twenty (20) months from the effective date of the **WET-WEATHER TMDL**, and a final **IMPLEMENTATION PLAN** no later than two years after the effective date of the **WET-WEATHER TMDL**; and

WHEREAS, CITY and **CALTRANS** (collectively "**PARTICIPATING AGENCIES**"), desire to have **COUNTY** utilize the services of a consultant to develop the **IMPLEMENTATION PLAN** and administer the consultant services contract; and

WHEREAS, COUNTY is willing to manage and administer a consultant services contract for the **IMPLEMENTATION PLAN**; and

WHEREAS, PARTICIPATING AGENCIES are aware that **COUNTY** has started work on **IMPLEMENTATION PLAN** in order to meet the deadlines established by Resolution No. 2002-022; and

WHEREAS, PARTICIPATING AGENCIES and **COUNTY** desire to share the monetary cost of the **IMPLEMENTATION PLAN**, including work already performed by **COUNTY**, based on the cost-sharing formula and estimated costs set forth in Exhibit B, attached hereto ("**COST-SHARING PERCENTAGE**");

NOW, THEREFORE, in consideration of the mutual benefits to be derived by **PARTICIPATING AGENCIES** and **COUNTY** and of the promises herein contained, it is hereby agreed as follows:

(1) **PARTICIPATING AGENCIES, AND EACH OF THEM, AGREE:**

- a. To provide reasonable assistance to **COUNTY** in the preparation of any necessary information and documents relative to the **IMPLEMENTATION PLAN**.
- b. To designate a representative to ensure that each of the **PARTICIPATING AGENCIES** maintains a commitment to the **IMPLEMENTATION PLAN**. The representative shall also be responsible for providing information requested by the consultant or **COUNTY** and ensuring that tasks assigned to the participating agency are completed on schedule.
- c. To deposit funds with **COUNTY** within forty-five (45) days upon being invoiced by **COUNTY**, in accordance with **COST-SHARING PERCENTAGE** set forth in Exhibit B.
- d. To review and approve the draft and final **IMPLEMENTATION PLAN** and any other relevant documents requested by **COUNTY** in a timely manner to meet the project schedule.
- e. That **COUNTY** shall act on behalf of **PARTICIPATING AGENCIES** in all matters pertaining to the consultant and in the administration of the consultant services contract for **IMPLEMENTATION PLAN**, and that **COUNTY** shall be solely responsible for coordinating the activities of the consultant and ensuring that all issues and concerns of the participating agencies are adequately addressed.
- f. Not to hold **COUNTY** accountable for the expense of changes or additions to the **IMPLEMENTATION PLAN**.

(2) **CALTRANS AGREES:**

- a. That **CALTRANS'** funding encumbered under this **AGREEMENT** is evidenced by the signature of its District Budget Manager certifying as to funds in the maximum sum of \$9,487.50 having been allocated and encumbered to **CALTRANS'** share of the cost of the **IMPLEMENTATION PLAN**. Any cost to be invoiced above this sum will require an amendment to this **AGREEMENT**.

(3) **COUNTY AGREES:**

- a. To execute and administer the contract and cause **IMPLEMENTATION PLAN** to be prepared in accordance with the scope of work, and to act on behalf of **PARTICIPATING AGENCIES** in all matters pertaining thereto.
- b. To submit draft and final **IMPLEMENTATION PLAN** to the **RWQCB** on behalf of **PARTICIPATING AGENCIES** and **COUNTY**, subject to the provisions of Sections (1) f and (4) d of this **AGREEMENT**. County shall also furnish **PARTICIPATING AGENCIES**, concurrently with submittal to the **RWQCB**, with both a printed and an electronic copy of the draft and final **IMPLEMENTATION PLAN**.
- c. To fund **COUNTY's** share of the cost of the **IMPLEMENTATION PLAN** in accordance with **COST-SHARING PERCENTAGE** set forth in Exhibit B.
- d. To furnish **PARTICIPATING AGENCIES**, within 120 calendar days after the completion of the **IMPLEMENTATION PLAN**, a final accounting of the cost of the **IMPLEMENTATION PLAN**. If the final cost of the **IMPLEMENTATION PLAN** is less than Six Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$632,500), **COUNTY** will refund to **PARTICIPATING AGENCIES**, within sixty (60) days after receipt of a claim therefor, the amount of their respective pro-rata shares of the difference.

(4) **PARTICIPATING AGENCIES AND COUNTY AGREE:**

- a. The purpose of this agreement is to cooperatively and voluntarily prepare and jointly fund an **IMPLEMENTATION PLAN** consistent with the **WET-WEATHER TMDL**, including the development and submittal of **IMPLEMENTATION PLAN**.
- b. The parties shall cooperate fully with one another to attain the purposes of this **AGREEMENT**.
- c. Nothing in this **AGREEMENT**, nor the work set forth in this **AGREEMENT**, nor any activity approved or carried out by the parties hereunder, shall be interpreted as a waiver of the position that the efforts to be undertaken by the parties are subject to the "Maximum Extent Practicable" standard set forth in the Clean Water Act (33 U.S.C. Section 1251 *et seq.*).
- d. The total cost of the **IMPLEMENTATION PLAN** shall not exceed \$632,500, except with the express written consent of all parties to this **AGREEMENT**.

- e. This **AGREEMENT** shall continue in effect until twelve months after the final **IMPLEMENTATION PLAN** is submitted to the **RWQCB**, unless earlier terminated or extended by written consent of all parties to this **AGREEMENT**; except that **COUNTY** may unilaterally terminate this **AGREEMENT** in the event changes or additions are necessary that would increase the total cost of the **IMPLEMENTATION PLAN** and the parties do not amend this **AGREEMENT** so as to provide for the funding of the increased cost of the **IMPLEMENTATION PLAN**, and in such an event **PARTICIPATING AGENCIES** shall only be entitled to a refund of **PARTICIPATING AGENCIES'** unused funds previously deposited with **COUNTY** for this **IMPLEMENTATION PLAN** and **COUNTY** shall have no further obligation under this **AGREEMENT**.
- f. Each party shall indemnify, defend, and hold each of the other parties, including their special districts, agents, officers, and employees, harmless from and against any and all liability and expense arising from any act or omission of such party, its agents, officers, and employees, in connection with the **IMPLEMENTATION PLAN**, including but not limited to defense costs, legal fees, claims, actions, and causes of action for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury, or property damage; provided, however, that no party shall indemnify another party for that party's own negligence or willful misconduct.
- g. 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 Sections 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 **AGREEMENT** 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 of the parties 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.
- h. It is understood and agreed that the provisions of the Assumption of Liability Agreement No. 73623 between **CITY** and **COUNTY**, adopted by the Board of Supervisors with an effective date of August 31, 2001, and currently in effect is inapplicable to this **AGREEMENT**.
- i. During the term of this **AGREEMENT**, each of the parties except **CALTRANS** hereby grants to the other parties the right of access and

entry to all storm drains, creeks, beaches, and existing monitoring stations at beaches subject to this **AGREEMENT** (the "Property") at all reasonable times for the purpose of discharging the duties and obligations described in this **AGREEMENT**. Prior to exercising said right of entry, the entering party shall provide reasonable written notice to the party that owns the Property. For the purposes of this provision, written notice shall include notice delivered via email and shall be delivered to the applicable party representative at least 48 hours in advance of entry onto the Property. Prior to entry, the entering party must receive confirmation from the noticed party that entry may proceed onto the Property. An entering party shall indemnify, defend and hold harmless the party that owns the Property, its Special Districts, elected and appointed officers, employees, and agents 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 its entry onto the Property and work performed on said Property.

- j. Any party intending to enter onto a **CALTRANS** right of way shall first make a written request to **CALTRANS**, identifying the site location, extent of access by persons (and equipment if any), dates and times of entry, as well as an explanation of the purpose of that entry. **CALTRANS** shall thereafter determine, within ten working days, if that entry will be allowed without a formal encroachment permit issued by the District Permit Engineer as an authorized presence of non-**CALTRANS** parties not interfering with or threatening the safety of the traveling public or the integrity of the **CALTRANS** infrastructure. In such case, **CALTRANS** will condition that right of entry on the accompaniment of a **CALTRANS** representative who shall be empowered to restrict or limit the access of those permittees as deemed necessary, at the sole discretion of **CALTRANS**. Where adverse impacts to traffic or the traveled way can be anticipated by **CALTRANS**, **CALTRANS** may require the requesting party to submit a formal encroachment permit application, to be filed and completed together with Traffic Control Plans when necessary (which must be prepared by or under the supervision of a traffic engineer licensed in the State of California) with the District Permit Engineer. An encroachment permit may require as much as six weeks to be issued depending upon the extent of coordination and development of traffic controls required for that access.
- k. All obligations of **CALTRANS** under the terms of this agreement are subject to the appropriation of the resources by the Legislature and the allocation of resources by the California Transportation Commission. This **AGREEMENT** has been written before ascertaining the availability of Federal or State legislative appropriation of funds, for the mutual benefit of the parties in order to avoid program and fiscal delays that would occur if the **AGREEMENT** were executed after that determination was made. This

AGREEMENT 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 **AGREEMENT**. If the United States Government or the California State Legislature does not appropriate sufficient funds for **CALTRANS** to participate in this **AGREEMENT**, this **AGREEMENT** 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 **AGREEMENT**. **CALTRANS**, however, has the option to withdraw from this **AGREEMENT** in the event sufficient funds are not appropriated for **CALTRANS**. Should **CALTRANS** exercise its option to withdraw from this **AGREEMENT**, **CALTRANS** shall remain responsible for its share of liability, if any, incurred while participating in this **AGREEMENT**.

- i. No party shall have a financial obligation to any other party under this **AGREEMENT**, except as expressly provided herein.
- m. This **AGREEMENT** may be amended in writing with the signature of all parties in the manner originally executed.
- n. Any notices, invoices, reports, correspondence, or other communication concerning this **AGREEMENT** shall be directed to the following, except that any party may change the name or address by giving the other parties at least ten days written notice of the new name or address:

CITY:

Mr. Yugal Lall
Director of Public Works
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265

CALTRANS:

Mr. Jai Paul Thakur
District Storm Water Program Manager
California Department of Transportation
100 South Spring Street, Suite 100, MS 13
Los Angeles, CA 90012

COUNTY:

Mr. Donald L. Wolfe
Acting Director of Public Works
Attention: Watershed Management Division
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, CA 91802-1460

- o. The parties are, and shall at all times remain as to each other, wholly independent entities. No party to this **AGREEMENT** shall have power to incur any debt, obligation, or liability on behalf of any other party unless expressly provided to the contrary by this **AGREEMENT**. 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.
- p. This **AGREEMENT** shall be binding upon and shall inure to the benefit of the respective successors, heirs, and assigns of each party.
- q. This **AGREEMENT** shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of California.
- r. If any provision of this **AGREEMENT** shall be determined by any court to be invalid, illegal or unenforceable to any extent, the remainder of this **AGREEMENT** shall not be affected and this **AGREEMENT** shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this **AGREEMENT**.
- s. This **AGREEMENT** may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.
- t. All parties have been represented by counsel in the preparation and negotiation of this **AGREEMENT**. Accordingly, this **AGREEMENT** shall be construed according to its fair language and any ambiguities shall not be resolved against the drafting party.
- u. Each of the persons signing below on behalf of a party represents and warrants that he or she is authorized to sign this **AGREEMENT** on behalf of such party.
- v. The effective date of this **AGREEMENT** shall be the date of the last party's signature.

IN WITNESS WHEREOF, the parties hereto have caused this **AGREEMENT** to be executed on their behalf by their respective officers, duly authorized, as follows:

Dated: _____

COUNTY OF LOS ANGELES,
acting for itself and on behalf of the
Los Angeles County Flood Control
District

ATTEST:

By _____
Chairman, Board of Supervisors

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel


By  _____
Deputy

Dated: 6.13.05

CITY OF MALIBU

By 
KATIE LICHTIG, City Manager

ATTEST:

By 
LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

By 
CHRISTI HUGIN, City Attorney

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Will Kempton
Director

Dated: 5-2-05

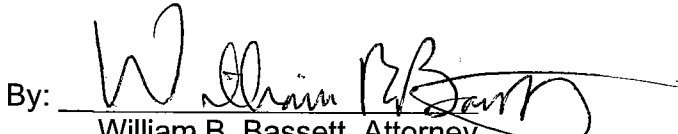
By:



Douglas R. Failing
District Director

Approved as to Form & Procedure:

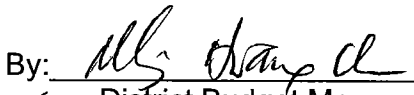
By:



William B. Bassett, Attorney

Certified as to funds:

By:

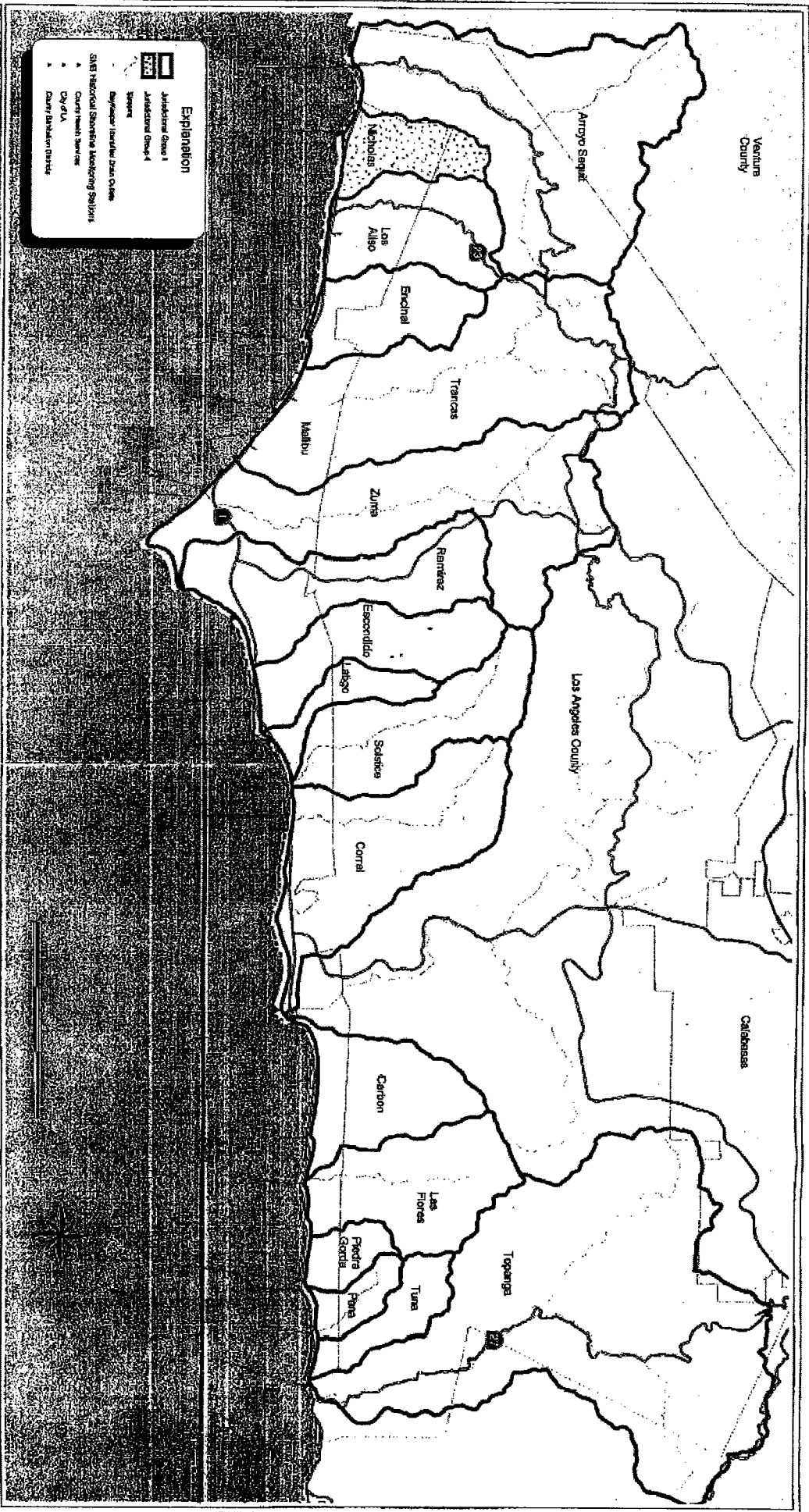

for District Budget Manager, JACQUE WRIGHT

Certified as to Financial Terms and Conditions:

By:



Accounting Administrator



Santa Monica Bay Wet Weather Bacteria TMDL

Jurisdictional Groups 1 and 4

CALTRANS Agreement No. 07-4728



Map prepared by TSS, Inc. in accordance with the TSS, Inc. contract with Caltrans. The map is a general representation and does not constitute a warranty or guarantee of any kind. TSS, Inc. shall not be held liable for any errors or omissions on this map.



EXHIBIT B - COST SHARING PERCENTAGE

PROJECT COST

Agency	Percent Contribution	Total*
COUNTY	71.0%	\$449,075.00
MALIBU	27.5%	\$173,937.50
CALTRANS	1.5%	\$9,487.50
Total	100.0%	\$632,500.00

Note: Total Costs include a 15% project management cost.