AGREEMENT BETWEEN THE COUNTY OF ORANGE AND THE CITY OF COSTA MESA FOR IMPLEMENTATION OF UNIFIED PROGRAM ELEMENT REQUIREMENTS

This Agreement is made and entered into on this 24th day of June, 1997 between the County of Orange, Health Care Agency, Environmental Health Division, hereinafter referred to as "County", and the City of Costa Mesa hereinafter referred to as the "City".

Recitals

WHEREAS, the Health and Safety Code, hereinafter referred to as "H&SC", Section 25404(c) mandates that the County establish a Unified Program to consolidate administration of the following requirements (collectively, "Program Elements"):

A. The Hazardous Waste Generator Program, H&SC, Division 20, Chapter 6.5;

B. The Aboveground Storage Tank Program Spill Prevention Control and Countermeasure Plan requirements, H&SC, Division 20, Chapter 6.67, Section 25270.5(c);

C. The Underground Storage Tank Program, H&SC, Division 20, Chapter 6.7;

D. The Hazardous Material Release Response Plans and Inventory Program, H&SC, Division 20, Chapter 6.95, Article 1;

E. The Risk Management Plan Program, applicable to acutely hazardous materials, H&SC, Division 20, Chapter 6.95, Article 2;

F. The Hazardous Materials Management Plan and the Hazardous Materials Inventory Statement requirements, Uniform Fire Code, Part 7, Article 80, Section 8001.3.2 and Section 8001.3.3, as adopted by the State Fire Marshal pursuant to H&SC Section 13143.9; and

WHEREAS, H&SC Section 25404.1(b)(1) requires that the County apply for state certification as a Certified Unified Program Agency (CUPA) to implement and operate the Unified Program throughout the unincorporated area of the County and in all cities within the County that have not been certified as a CUPA; and

WHEREAS, the County has submitted an application to become a CUPA and was designated as the CUPA for Orange County, including incorporated cities within the county, on January 1, 1997; and

WHEREAS, H&SC Section 25404.1(b)(3) authorizes the County to enter into formal agreements with other qualified public agencies to implement and enforce certain elements of the Unified Program as "Participating Agencies"; and

WHEREAS, the County wishes to have the City implement and enforce the following requirements in all territory within the jurisdiction of the CITY: H&SC Division 20, Chapter 6.95, Articles 1 and 2; and Subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the H&SC; and

WHEREAS, the City is qualified and wishes to implement said requirements on behalf of the County.

NOW, THEREFORE, the parties hereto mutually agree as follows:

Agreement

1. Program Elements to be Administered by the County

The County, acting as the CUPA, shall administer the following program elements relating to the following facilities and operations in all territory within its jurisdiction.

A. The Hazardous Waste Generator Program, H&SC, Division 20, Chapter 6.5;

B. The Aboveground Storage Tank Program Spill Prevention Control and Countermeasure Plan requirements, H&SC, Division 20, Chapter 6.67, Section 25270.5(c);

C. The Underground Storage Tank Program, H&SC, Division 20, Chapter 6.7;

2. Program Elements to be Administered by the City

The City, acting as a Participating Agency, shall administer the following program elements relating to the following facilities and operations in all territory within its jurisdiction:

A. The Hazardous Material Release Response Plans and Inventory Program, pursuant to H&SC, Division 20, Chapter 6.95, Article 1;

B. The Risk Management Prevention Plan Program, applicable to acutely hazardous materials, pursuant to H&SC, Division 20, Chapter 6.95, Article 2;

C. The Hazardous Material Management Plan and the Hazardous Materials Inventory Statement requirements, pursuant to Uniform Fire Code, Part 7, Article 80, Section 8001.3.2 and Section 8001.3.3, as adopted by the State Fire Marshal pursuant to H&SC Section 13143.9, to the extent implemented by the City.

3. County's Obligations

In accordance with H&SC Section 25404 et seq., and Title 27 of the California Code of Regulations Sections 15100 et seq., the County shall:

A. Conduct, at a minimum, quarterly meetings of Participating Agencies for the purpose of establishing policies and procedures, resolving duplication and regulatory overlap issues, encouraging uniformity, and communicating enforcement actions, pursuant to 27 CCR 15180(a)(7).

B. Establish and implement Single Fee Billing System pursuant to H&SC Section 25404.5(a) and 27 CCR 15210(a) and 15220, incorporating the following elements:

(1) Fees and surcharges in an amount to cover the necessary and reasonable costs incurred by the County and Participating Agencies in implementing the Unified Program, including the state surcharge.

(2) Methods for the collection and accounting of fees and surcharges.

(3) Policies and procedures for the adjustment of fees and assignment of lost funds due to nonpayment.

C. Implement a Fee Accountability Program, pursuant to H&SC Section 25404.5(c) and 27 CCR 15210(b), to encourage efficient and cost effective operation of the Unified Program and annually review such Program.

D. Collect fees for the City-administered program elements and disburse fees collected to the City within 45 days of collection, or as otherwise agreed to by the County and the City, pursuant to 27 CCR 15210(a)(4).

E. Consolidate, coordinate and make consistent any local or regional regulations, ordinances, requirements or guidance documents related to the implementation of Program Elements in cooperation with the City, pursuant to H&SC Section 25404.2(a)(2).

F. Develop and Implement a single, unified Inspection and Enforcement Plan in cooperation with the City and coordinate the Plan with inspection and enforcement programs of other federal, state, regional and local agencies, pursuant to H&SC Section 25404.2(a)(3) and (4).

G. Establish and implement a Dispute Resolution Process designed to resolve problems pursuant to 27 CCR 15180(a)(4) and 15210(a)(9), and a process for formal appeals from dispute resolution decisions.

H. Conduct an annual audit of the City performance, pursuant to 27 CCR 15280(a) and 15290(b), or as necessary to maintain the Unified Program standards. Guidelines for content and conduct of the audits shall be developed in cooperation with the City.

I. Enter into a Program Improvement Agreement with the City, pursuant to 27 CCR 15180(a)(8)(D), if the City ceases to meet minimum qualifications or fails to implement its Program Elements. The Program Improvement Agreement shall specify the areas of improvement, minimum accomplishments necessary, and time frames which shall be met by the City.

J. Establish procedures for removing or revoking Participating Agencies, containing, at a minimum: notice; a statement of causes; public comment; and appeal procedures, pursuant to H&SC Section 25404.3(d)(1)(B). The County shall comply with such procedures prior to notifying the Secretary of Cal-EPA that a Participating Agency no longer meets the minimum qualifications, or fails to implement the Program Element.

K. Comply with all statutory and regulatory requirements pursuant to H&SC Section 25404 et seq., and 27 CCR 15100 et seq.

4. <u>The City's Obligations</u>

In accordance with H&SC Section 25404 et seq., and Title 27 of the California Code of Regulations Sections 15100 et seq., the City shall:

A. Attend and participate in all scheduled meetings with the County.

B. Maintain adequate resources to implement its Program Elements, pursuant to 27 CCR 15170(l)(2).

C. Maintain training records and make training records available to the County upon request pursuant to 27 CCR 15180(a)(2).

D. Institute procedures to respond to requests for information from the public, from government agencies, and from emergency responders, pursuant to 27 CCR 15180(a)(2)(D).

E. Provide the County with all data required by the County to effectively manage the Unified Program The data and information shall be submitted in a timely manner and according to a frequency agreed upon by the County and the City. The method of submittal will be agreed upon by the County and the City.

F. Cooperate with the County in the development and implementation of a Single Fee System and comply with all provisions in the System.

G. Establish fees for Program Elements which reflect the necessary and reasonable costs of implementation, pursuant to 27 CCR 15230(a).

H. Notify the County of the cost of Program Elements and fees, pursuant to 27 CCR 15210(a)(4) and 15230(b), within 30 days following a written request by the County.

I. Receive fees collected by the County for City-administered programs and advise the County of any discrepancies within 30 days of receipt of the fees. Both parties will work towards resolving any discrepancies.

J. Determine any adjustment or waiver of fees that was erroneously charged or computed for City-administered programs, at the discretion of the City Council or as delegated.

K. Cooperate with the County in the consolidation of any local or regional regulations, ordinances, requirements or guidance documents related to the implementation of Program Elements.

L. Cooperate with the County in the development of a single, unified Inspection and Enforcement Plan and comply with all provisions in the Plan.

M. Abide by the procedures established in the Dispute Resolution Process.

N. Cooperate with the County in its annual audit of the Program Elements administered by the City.

O. Enter into a Program Improvement Agreement with the County if the City ceases to meet minimum qualifications or fails to implement its Program Elements, pursuant to 27 CCR 15180(a)(8)(D). The Program Improvement Agreement shall specify the areas of improvement, minimum accomplishments necessary and time frames which the City must meet.

P. Comply with all statutory and regulatory requirements pursuant to H&SC 25404 et seq. and 27 CCR 15100 et seq.

5. Indemnification

A. The City shall indemnify and hold the County, its officers, agents and employees free and harmless from any claim or liability whatsoever, based or asserted upon any act or omission of the City, its officers, agents and employees, for property damage, bodily injury or death or any other element of damage of any kind or nature, occurring in the performance of this Agreement to the extent that such liability is imposed on the County by the provisions of Section 895.2 of the Government Code and the City shall defend, at its own expense, including attorney's fees, the County, its officers, agents and employees in any legal action or claim of any kind based upon such alleged acts or omissions.

B. The County shall indemnify and hold the City, its officers, agents and employees free and harmless from any claim or liability whatsoever, based or asserted upon any act or omission of the County, its officers, agents and employees, for property damage, bodily injury or death or any other element of damage of any kind or nature, occurring in the performance of this Agreement to the extent that such liability is imposed on the City by the provisions of Section 895.2 of the Government Code and the County shall defend, at its own expense, including attorney's fees, the City, its officers, agents and employees in any legal action or claim of any kind based upon such alleged acts or omissions.

6. Dispute Resolution

In the event that a dispute arises between the County and the City, the following procedures will be followed in an effort to resolve the dispute.

1. The County and the City will meet and discuss the issues in an effort to resolve the dispute. Both agencies shall respond to dispute inquiries in an expeditious fashion.

2. If a satisfactory resolution cannot be reached, the County and the City will meet with representatives of Cal/EPA in an effort to resolve the dispute.

3. If the previous measures have been unsuccessful in resolving the dispute, each agency, will state their positions and recommended resolutions, in writing. The County will submit both positions, without revision, to Cal/EPA, following procedures established by Cal/EPA. The final decision of Cal/EPA is binding on both agencies.

7. Termination of Agreement

Either party may terminate this Agreement by giving the other party six (6) months written notice and upon approval of the Secretary of Cal-EPA.

8. Amendments

This Agreement sets forth the entire Agreement between the parties and any modifications must be in the form of a written amendment agreed to and signed by both parties.

9. Severability

Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision shall be invalid under applicable law, it will be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

10. Notice

All notices and other communications shall be in writing and shall be effective when deposited in the U.S. Mail, postage prepaid and addressed as follows:

To the County:
Director of Environmental Health Division
Health Care Agency
County of Orange
2009 E. Edinger Ave.
Santa Ana, CA 92705

To CITY:
Fire Chief
City of Costa Mesa
2803 Palm Drive, P.O. Box 1200
Costa Mesa, CA 92628-1200

A party shall notify the other party of any change in its address.

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Page 9

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF

BY: _____ DATED: 6-2-97
Peter Buffa
Mayor

ATTEST:

BY: _____ DATED: 6-2-97
Mary T. Elliott
Deputy City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:
CITY ATTORNEY

BY: _____ DATED: 5-20-97
City Attorney

COUNTY OF ORANGE

BY: _____ DATED: JUN 24 1997
William Steiner
Chairman, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD:

BY: _____ DATED: JUN 24 1997
Darlene J. Bloom
Clerk of the Board of Supervisors of
Orange County, California

APPROVED AS TO FORM:
COUNTY COUNSEL

BY: _____ DATED: 6/5/97
Laurence M. Watson
County Counsel