

1 AMENDMENT NO. 1
2 AGREEMENT TO FUND NUTRIENT, FECAL COLIFORM AND TOXICS TOTAL MAXIMUM DAILY LOAD (TMDL)
3 STUDIES IN THE NEWPORT BAY WATERSHED

4 THIS AMENDMENT, for purposes of identification numbered Amendment No. 1 to
5 Agreement No. D99-128, is made and entered into this ____ day of _____, 2006
6 ("AMENDMENT"), by and between the County of Orange ("COUNTY"), the Orange County Flood
7 Control District ("DISTRICT"), the City of Costa Mesa ("COSTA MESA"), the City of
8 Irvine ("IRVINE"), the City of Laguna Hills ("LAGUNA HILLS"), the City of Laguna Woods
9 ("LAGUNA WOODS"), the City of Lake Forest ("LAKE FOREST"), the City of Newport Beach
10 ("NEWPORT BEACH"), the City of Orange ("ORANGE"), the City of Santa Ana ("SANTA ANA"),
11 the City of Tustin ("TUSTIN"), the Irvine Ranch Water District ("IRWD"), The Irvine
12 Company ("TIC"), the California Department of Transportation ("CALTRANS"), Tustin
13 Legacy Community Partners ("TLCP"), Lennar Homes of California, Inc. ("LENNAR"), and
14 Orange County Great Park Corporation ("GPC"). The seventeen entities are hereinafter
15 sometimes jointly referred to as the "PARTIES" and individually as "PARTY". The cities
16 are hereinafter sometimes jointly referred to as the "CITIES". Thirteen entities (all
17 entities except for CALTRANS, TLCP, LENNAR, and GPC) are sometimes jointly referred to
18 as the "ORIGINAL PARTIES."

19 WITNESSETH

20 WHEREAS, the ORIGINAL PARTIES entered into Agreement No. D99-128 on
21 September 18, 2003, referred to hereinafter as "AGREEMENT", to provide funding for the
22 Nutrient, Fecal Coliform and Toxics Total Maximum Daily Load (TMDL) studies in the
23 Newport Bay Watershed; and,

24 WHEREAS, according to Section 6 of the AGREEMENT, the AGREEMENT may be
25 amended in writing only with the unanimous written approval of the ORIGINAL PARTIES;
26 and,

WHEREAS, the ORIGINAL PARTIES agree to amend the AGREEMENT to add
CALTRANS, TLCP, LENNAR and GPC as PARTIES to the AGREEMENT; and,

WHEREAS, the PARTIES have reached agreement on a new funding formula,
which states that (1) CALTRANS will contribute a fixed five percent (5.0%) of the

1 total budget cost, (2) TLCP will contribute a fixed two and one half percent (2.5%) of
2 the total budget cost, (3) LENNAR will contribute a fixed two and one half percent
3 (2.5%) of the total budget cost, (4) GPC will contribute a fixed two percent (2.0%) of
4 the total budget cost, and (5) the ORIGINAL PARTIES will cost-share eighty eight
5 percent (88%) of the total budget costs;

6 WHEREAS, the ORIGINAL PARTIES will further cost-share their 88% allocation
7 based upon the original cost-share formula in the AGREEMENT, such that (1) the COUNTY,
8 DISTRICT and CITIES contributions are based on the watershed land area and population
9 applied to the formula in the Amendment and Reinstatement of the National Pollutant
10 Discharge Elimination System Stormwater Implementation Agreement dated June 25, 2002,
11 and (2) TIC and IRWD contributions are based on a fixed twelve and one-half percent
12 (12.5%) each.

13 NOW, THEREFORE, in consideration of the foregoing, it is agreed by and
14 between the PARTIES hereto that the AGREEMENT shall be amended as follows:

15 Section 1. Each and all of the provisions of the AGREEMENT remains in
16 full force and effect, except that Section 3, Section 4, Section 5, Section 10 and
17 Section 16 and Exhibit A and Exhibit C are amended in their entirety, as follows:

18 Section 2. Section 3 of the AGREEMENT, entitled "FUNDING," shall be
19 amended to read in full as follows: Exhibit A, which is attached to this AMENDMENT
20 and by this reference is made a part hereof, presents the cost-share allocations for
21 the PARTIES. As stated in Exhibit A (Table A-1), for the duration of the AGREEMENT as
22 amended, the ORIGINAL PARTIES shall provide eighty-eight percent (88%) of the total
23 budget costs, CALTRANS shall provide five percent (5.0%) of the total budget costs,
24 TLCP shall provide two and one half percent (2.5%) of the total budget costs, LENNAR
25 shall provide two and one half percent (2.5%) of the total budget costs, and Orange
26 County Great Park Corporation shall provide two percent (2.0%) of the total budget
costs. As shown in Exhibit A (Table A-2), the ORIGINAL PARTIES' eighty eight percent
(88%) share of the total budget costs (hereafter "ORIGINAL COST ALLOCATION") shall be
cost-shared between an urban allocation and an open space allocation. The urban
allocation shall remain at seventy five percent (75%) of the ORIGINAL COST ALLOCATION

1 and the respective shares of IRWD and TIC shall remain at twelve and one half percent
2 (12.5%) of the ORIGINAL COST ALLOCATION for the duration of this AGREEMENT as amended
3 herein. The individual cost shares for the COUNTY, DISTRICT and CITIES will be
4 revised once every year pursuant to the formula provided in Exhibit B to the
5 AGREEMENT, which is attached to the AGREEMENT and made a part hereof, based on changes
6 in watershed land area and population. The individual cost shares for the COUNTY,
7 DISTRICT and CITIES shall be calculated by the COUNTY Resources and Development
8 Management Department, Environmental Resources Section from population, land area and
9 watershed area data. These calculations shall be completed by January 1 of each year
10 and shall be included in the annual budget proposal.

11 Section 3. Section 4 of the AGREEMENT, entitled "PROGRAM BUDGETS AND
12 COSTS" shall be amended to read in full as follows: The COUNTY shall submit a scope
13 of work and a budget for the following fiscal year to each of the PARTIES by February
14 15 of each year. The budget shall contain an explanation of any recommended program
15 changes, an estimate of all planned expenditures and an estimate of the payment
16 required from each PARTY for the following fiscal year. For the State of California
17 budgeting requirements, CALTRANS' contribution shall not exceed \$150,000 or five
18 percent (5.0%) of the total budget costs, whichever is less, for each fiscal year
19 during the term of the AGREEMENT. If CALTRANS contribution would be greater than
20 \$150,000 for a given fiscal year, the amount over \$150,000 ("EXCESS AMOUNT") shall be
21 cost-shared as described in Section 2 of this Amendment, with the exception that for
22 such EXCESS AMOUNT, the ORIGINAL COST ALLOCATION shall be ninety-three percent (93%)
23 and CALTRANS contribution shall be zero percent (0%).

24 The PARTIES shall be permitted to review and approve the program scope of work
25 and budget for the forthcoming year. Criteria for approval shall be affirmative
26 written responses from all of the PARTIES. The COUNTY and DISTRICT will constitute
one approving PARTY.

The tasks and expenditures for each fiscal year will be presented and calculated
as shown in Exhibit C, which is attached hereto and made a part hereof. All tasks and
expenditures will be updated each fiscal year as part of the budget approval process.

1 Therefore, Exhibit C as attached is a form to be completed every year. The COUNTY
2 shall be entitled to charge to the program all costs for direct labor, materials,
3 equipment and outside contract services for costs associated with carrying out the
4 approved scope of work. Recoverable costs will also include an overhead charge
5 calculated by the County Auditor-Controller which includes Resources and Development
6 Management Department overhead and County-wide cost allocation plan.

7 Section 4. Section 5 of the AGREEMENT, entitled "PAYMENTS" shall be
8 amended to read in full as follows: Within 15 calendar days of the effective date of
9 this AMENDMENT, the COUNTY shall send the PARTIES an invoice for a deposit which
10 constitutes their share of the total first year costs identified in Exhibit C (Table
11 C-1). Each of the PARTIES shall pay the deposit within 45 calendar days of their
12 respective receipt of the invoice.

13 The COUNTY shall notify each of the PARTIES if it appears that costs may exceed
14 the budget approved by the PARTIES in any fiscal year. The COUNTY shall prepare a
15 fiscal year end accounting within 60 calendar days of the end of the fiscal year. If
16 the fiscal year end accounting results in costs (net of interest earnings) exceeding
17 the sum of the deposits, and the COUNTY has notified the PARTIES of potential cost
18 overruns, the COUNTY shall seek approval of the excess cost from the PARTIES in the
19 form of a revised budget and, upon approval, shall invoice each PARTY for its prorated
20 share of the excess cost up to the amount of the revised approved budget. Each PARTY
21 shall pay the billing within 45 calendar days of the date of the invoice. If the
22 fiscal year end accounting results in the sum of the deposits exceeding costs (net of
23 interest earnings), the excess deposits will carry forward to reduce the billings for
24 the following year. The fiscal year end accounting results and associated invoices
25 for each PARTY will take into consideration any outside funding provided for programs
26 in the approved budget from entities not party to this AMENDMENT in the manner
presented in Exhibit C (Table C-2).

After the initial billing for the program, the COUNTY shall invoice each PARTY
for its annual deposit at the beginning (July 1) of each fiscal year. Each PARTY
shall pay the deposit within 45 calendar days of the date of the invoice. Each

1 PARTY'S deposit shall be based on its prorated share of the approved annual budget,
2 reduced by the sum of (a) its prorated share of any surplus identified in the prior
3 fiscal year end accounting, and (b) its prorated share of any funding provided for
4 programs in the approved budget from entities not party to this AMENDMENT.

5 Interest earned on the PARTIES' deposits will not be paid to the PARTIES, but
6 will be credited against the PARTIES' share of the program costs.

7 Upon termination of the program, a final accounting shall be performed by the
8 COUNTY. If costs remaining after the deduction of interest costs exceed the sum of
9 the deposits, the COUNTY shall invoice each PARTY for its prorated share of the
10 deficit. Each PARTY shall pay the invoice within 45 calendar days of the date of the
11 invoice. If the sum of the deposits, including interest, exceeds the costs, the
12 COUNTY shall reimburse to each PARTY its prorated share of the excess, within 45
13 calendar days of the final accounting.

14 Section 5. Section 10 of the AGREEMENT, entitled "NO THIRD PARTY
15 BENEFICIARIES", is amended to read in full as follows: Nothing expressed or mentioned
16 in this AGREEMENT is intended or shall be construed to give any person, other than the
17 PARTIES hereto and any entity in which a PARTY has a legal interest (such as, but not
18 limited to, a limited liability membership interest or a partnership interest), and
19 any permitted successors or assigns of a PARTY, any legal or equitable right, remedy
20 or claim under or in respect of this AGREEMENT or any provisions herein contained.
21 This AGREEMENT and any conditions and provisions hereof is intended to be and is for
22 the sole and exclusive benefit of the PARTIES and the entities in which they have a
23 legal interest and their successors or assigns and for the benefit of no other person,
24 agency or entity.

25 Section 6. Section 16 of the AGREEMENT, entitled "NOTICES", shall be
26 amended to read in full as follow: All notices required or desired to be given under
this AGREEMENT as amended shall be in writing and (a) delivered personally, or (b)
sent by certified mail, return receipt requested or (c) sent by telefacsimile
communication followed by a mailed copy, to the addresses specified below, provided

1 each PARTY may change the address for notices by giving the other PARTIES at least ten
2 (10) days written notice of the new address. Notices shall be deemed received when
3 actually received in the office of the addressee or when delivery is refused, as shown
4 on the receipt of the U.S. Postal service, or other person making the delivery, except
5 that notices sent by telefacsimile communication shall be deemed received on the first
6 business day following transmission.

7 Director of Public Services
City of Costa Mesa
8 P.O. Box 1200
Costa Mesa, CA 92628-1200
9 Facsimile: (714) 754-5028

10 Director of Public Works
City of Irvine
P.O. Box 19578
11 Irvine, CA 92623-9578
Facsimile: (949) 724-6440

12 Director of Public Services
13 City of Laguna Hills
24035 El Toro Road
14 Laguna Hills, CA 92653
Facsimile: (949) 707-2633

15 Director of Community Development
City of Laguna Woods
16 24264 El Toro Road
Laguna Woods CA 92637
17 Facsimile: (949) 639-0591

18 Director of Public Works
City of Lake Forest
25550 Commercentre Dr. Ste 100
19 Lake Forest, CA 92630
Facsimile: (949) 461-3511

20 Director of Public Works
21 City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658
22 Facsimile: (949) 718-1840

23 Director of Public Works
City of Orange
24 300 E. Chapman Ave
Orange, CA 92866
25 Facsimile: (714) 532-6444

26 Director of Public Works
City of Santa Ana
101 W. 4th St.

1 Santa Ana, CA 92701
2 Facsimile: (714) 647-5635

3 Director of Public Works
4 City of Tustin
5 300 Centennial Way
6 Tustin, CA 92780
7 Facsimile: (714) 734-8991

8 Director, RDMD
9 County of Orange
10 300 N. Flower Street
11 Santa Ana, CA 92702-4048
12 Facsimile: (714) 834-2395

13 Director, Water Quality
14 Irvine Ranch Water District
15 3512 Michelson Dr
16 Irvine, CA 92712
17 Facsimile: (949) 453-1228

18 Vice President of Environmental Affairs
19 The Irvine Company
20 550 Newport Center
21 Newport Beach, CA 92658-8904
22 Facsimile: (949) 720-2448

23 Office Chief, Environmental Planning
24 California Department of Transportation
25 3337 Michelson Dr. Ste 380
26 Irvine, CA 92612-8894
Facsimile: (949) 724-2519

David B. Placek
Tustin Legacy Community Partners
Senior Project Manager
250 Commerce, Suite 100
Irvine, CA 92602
Facsimile: (949) 453-8994

Lennar Homes of California
Jim Werkmeister
7030 Trabuco Road, Building 83
Irvine, California 92618
Facsimile: (949) 551-1186

Glen Worthington, Manager of Planning
Orange County Great Park Corporation
P.O. Box 19575
Irvine, CA 92623-9575
Facsimile: (949) 724-7407

IN WITNESS WHEREOF, the PARTIES hereto have executed this AMENDMENT the day and
year first above written:

COUNTY OF ORANGE,
a political subdivision of the State of
California

Date: _____

By: _____

Chairman of the Board of Supervisors
ORANGE COUNTY FLOOD CONTROL DISTRICT
a body corporate and politic

By: _____

Chairman of the Board of Supervisors

APPROVED AS TO FORM:
COUNTY COUNSEL

By: _____

Geoffrey K. Hunt, Deputy

Date: _____

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

By: _____

DARLENE J. BLOOM
Clerk of the Board of Supervisors of
Orange County, California

Date: _____

CITY OF COSTA MESA

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Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Costa Mesa

CITY OF IRVINE

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Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Irvine

CITY OF LAGUNA HILLS

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Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Laguna Hills

CITY OF LAGUNA WOODS

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Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Laguna Woods

CITY OF LAKE FOREST

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By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Lake Forest

CITY OF NEWPORT BEACH

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Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Newport Beach

CITY OF ORANGE

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Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Orange

CITY OF SANTA ANA

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Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Santa Ana

CITY OF TUSTIN

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Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Tustin

THE IRVINE RANCH WATER DISTRICT

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THE IRVINE COMPANY

Date: _____

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Title: _____

CALIFORNIA DEPARTMENT OF TRANSPORTATION

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TUSTIN LEGACY COMMUNITY PARTNERS, LLC
a Delaware limited liability company

Date: _____

By: _____

Susan Lindquist
Director of Community Development

Date: _____

By: _____

Name: _____
Title: _____

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Lennar Homes of California,
a Developer Member of Heritage Fields Limited
Liability Company

Date: _____

By: _____

Name: _____

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Date: _____

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Title: _____

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GREAT PARK CORPORATION,
a California non-profit organization

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

**EXHIBIT A
COST-SHARE FOR PROGRAM PARTICIPANTS**

TABLE A-1: AGREEMENT D99-128 COST-SHARE FORMULA

LAND USE	COST SHARE	PROGRAM PARTICIPANTS
	88.0%	Original Parties (Table A-2)
	5.0%	CalTrans
	2.5%	Tustin Legacy Community Partners
	2.5%	Lennar
	2.0%	Great Park Corporation

^a88% is further cost-shared as shown in Table A-2

TABLE A-2: COST-SHARE FORMULA FOR ORIGINAL PARTIES (88% FROM TABLE A-1)

LAND USE	COST SHARE	PROGRAM PARTICIPANTS
Urban	75% ¹	Costa Mesa Irvine Laguna Hills Laguna Woods Lake Forest Newport Beach Orange Santa Ana Tustin County of Orange O.C. Flood Control District
Open Space/Undefined Areas	12.5% ²	The Irvine Company
Open Space/Undefined Areas	12.5% ²	Irvine Ranch Water District

¹ Includes all incorporated cities in the Newport Bay watershed and the County of Orange and Orange County Flood Control District. The percentage breakdown for each is based on the existing NPDES funding formula which is based on a weighted percentage of population and land area.

² Includes all sources that do not fall in other categories such as sewage spills, atmospheric deposition, rising groundwater, etc.

EXHIBIT C

Budget for Agreement D99-128			
Table C-1			
2005-2006 Budget for Newport Bay/San Diego Creek Watershed			
Nutrient, Fecal Coliform and Toxics TMDL Programs			
TMDL	TASK DESCRIPTION	TOTAL COST	TOTAL COST PER TMDL
Nutrient	Newport Bay Nutrient TMDL Dissolved Oxygen and Algae Distribution Study Prop. 13 Grant Matching Funds	\$ -	
Nutrient	Nutrient Monitoring and Data Collection (TMDL Implementation Plan Section 2.c.1 Regional Nutrient Monitoring Program)	\$ -	
	NUTRIENT TMDL TOTAL		\$ -
Toxics	Nitrogen and Selenium Management Program (See Table C-2 for line item calculation)	\$ -	
Toxics	Regional Monitoring Program	\$ -	
Toxics	Selenium Source Study	\$ -	
	TOXICS TMDL TOTAL		\$ -
Fecal Coliform	Fecal Coliform TMDL 2003-2004 Data Analysis (TMDL Implementation Plan Section 3.a.ii.a)	\$ -	
	Prop. 13 Fecal Coliform Study	\$ -	
Fecal Coliform	Shellfish Harvesting Beneficial Use Additional Studies	\$ -	
	FECAL COLIFORM TMDL TOTAL		\$ -
	2005-2006 BUDGET TOTAL	\$ -	\$ -

EXHIBIT C

Nitrogen and Selenium Management Program Budget Table C-2		
NSMP Budget Calculation		Cost
NSMP Program Budget FY 2005-06		\$ -
Retroactive Payments (New Participants)*		\$ -
		<hr/>
	<i>Net NSMP Budget FY 2005-06</i>	\$ -
Contributions By Funding Agreement		Cost
	% of NSMP	
Agreement D99-128 Cost-Share **	99.0%	\$ -
Outside Funding ***	1.0%	\$ -
		<hr/>
	<i>Total NSMP Contributions</i>	\$ -

* = New Participants in the NSMP are required to fund all program activities, retroactive to FY 2005-06

** = Budget amount for NSMP in Table C-1.

*** = Golden State Water Company (1%), Nexus (TBD%), and any future funding partners (if applicable)