Stradling Yocca Carlson & Rauth
Draft dated November 22, 2006

AGENCY AGREEMENT

by and between

COSTA MESA PUBLIC FINANCING AUTHORITY

and

CITY OF COSTA MESA

Relating to

$_____
CITY OF COSTA MESA
2007 CERTIFICATES OF PARTICIPATION
(POLICE FACILITY EXPANSION PROJECT)

Dated as of January 1, 2007

AGENCY AGREEMENT

THIS AGENCY AGREEMENT (the "Agency Agreement"), dated as of January 1, 2007, is entered into by and between COSTA MESA PUBLIC FINANCING AUTHORITY, a joint powers authority duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "Authority"), and the CITY OF COSTA MESA, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California (the "City");

W I T N E S S E T H :

WHEREAS, the Authority and the City have entered into a Lease/Purchase Agreement, dated as of October 1, 2003, as amended by a First Amendment to Lease/Purchase Agreement, dated as of January 1, 2007 (as amended, the "Lease"), whereby the Authority has leased to the City certain real property and the existing improvements thereon (the "Property"), together with the improvements to be constructed on the Property (such improvements, together with the Property, the "Leased Premises"), with a portion of the proceeds of the $_____ City of Costa Mesa 2007 Certificates of Participation (Police Facility Expansion Project) (the "2007 Certificates"); and

WHEREAS, the Authority desires to appoint the City as its agent for the purposes of the acquisition, construction, delivery and installation of the improvements to be constructed with the proceeds of the 2007 Certificates (collectively, the "2007 Project"); and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Agency Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Agency Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

Section 1. City to Act as Agent for the Authority and the City. The Authority hereby appoints the City as its agent in connection with the acquisition, construction, delivery and installation of the 2007 Project. The City, as the agent of the Authority for the foregoing purpose, shall cause the acquisition, construction, delivery and installation of the 2007 Project to be completed on or before the dates set forth in Section 3 of this Agency Agreement and otherwise in accordance with the Lease and all other laws applicable to the 2007 Project.

The appointment by the Authority of the City as its agent as provided in this Section and the acceptance by the City of such appointment results in the assumption by the City of duties, responsibilities and liabilities which are separate and apart from its duties, responsibilities and liabilities under the Lease, and such assignment does not include or transfer to the City any of the rights or obligations of the Authority under the Lease which have been assigned by the Authority to the Trustee pursuant to the Assignment Agreement. It is recognized by the parties that the Authority

has appointed the City for the purposes specified in this Agency Agreement, rather than appoint another firm or entity for said purposes, based upon the Authority's and the City's determination that the City is suitable to perform the duties, responsibilities and liabilities delegated to and assumed by it pursuant to this Agreement due to the expertise, knowledge and ability of the City's personnel with respect to similar undertakings.

Section 2. Acceptance. The City, for one dollar ($1.00) and other good and valuable consideration in hand received, does hereby accept the foregoing appointment as agent of the Authority for the purposes set forth in Section 1 hereof.

Section 3. Time of Completion and Liquidated Damages. The construction and equipping of the 2007 Project shall be completed on or prior to [_____ 1, 20__]. It is agreed that, if the City does not cause the completion of the acquisition, construction, equipping and installation of the portion of the 2007 Project being constructed on the Property by its completion date specified above by construction contractors or a construction manager, whichever the City deems appropriate, liquidated damages will be assessed against the construction contractor for each day completion is delayed in the amount specified in such construction contractor's contract. The City shall cause to be paid to the Trustee all amounts received as liquidated damages for application toward the Lease Payments.

Each construction contractor hired by the City shall be required to provide payment and performance bonds in amounts equal to the maximum price under its contract.

Section 4. Construction and Acquisition of the 2007 Project. The City agrees to oversee the construction, acquisition, delivery and installation of the 2007 Project in accordance with the following terms:

(a) Construction and Completion. The City agrees to proceed with all due diligence to complete the construction, acquisition, delivery and installation of the 2007 Project, all in accordance with the plans and specifications for the 2007 Project (the "Plans and Specifications") approved pursuant to the Design/Build Agreement and the other contracts to be entered into by the City with respect to the 2007 Project. The City shall comply with all statutes and laws applicable to the performance of its obligations hereunder, including all public laws applicable thereto and all laws regarding the approval, acquisition and construction of public projects by general law cities in the State of California. The City shall make certain that each contract relating to the 2007 Project is awarded in accordance with applicable law and contains a scheduled completion date which requires completion on or before the scheduled completion date referred to in Section 3 above;

(b) Change Orders. Subject to any other restrictions imposed upon the City, the City may approve any changes to the Plans and Specifications so long as any change does not, and all such changes as a whole do not, (i) substantially alter the nature of the 2007 Project, (ii) delay the completion of the 2007 Project beyond its scheduled completion date, (iii) reduce the fair rental value of the portion of the 2007 Project being constructed on the Property, or (iv) increase the total Costs of the 2007 Project to an amount in excess of the amount in the Project Fund unless there has been deposited with the City an amount equal to such excess or unless there has been deposited with the City a certificate of an Authorized Representative of the City, together with a revised construction budget demonstrating that the total amount on deposit to pay for the 2007 Project is adequate to allow the completion of the 2007 Project as planned;

(c) Payment of Costs of the 2007 Project. Payment of the portion of the Costs of the 2007 Project being financed by the City shall be made from moneys deposited in the Project Fund, and shall be disbursed for such purpose in accordance and upon compliance with the Trust Agreement. Neither the Authority nor the City shall be liable for the payment of Costs of the 2007 Project other than from amounts on deposit in the Project Fund; and

(d) Unexpended Monies. The City agrees that unexpended moneys remaining in the Project Fund shall, upon payment in full of all Project Costs of the 2007 Project, be applied solely in accordance with the provisions of the Trust Agreement.

(e) Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agency Agreement shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Agency Agreement shall be affected thereby, and each provision of this Agency Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 3. Applicable Law. This Agency Agreement shall be governed by and construed in accordance with the laws of the State.

Section 4. Representatives. Whenever under the provisions of this Agency Agreement the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority by an Authorized Representative of the Authority and for the City by an Authorized Representative of the City and any party hereto shall be authorized to rely upon any such approval or request.

Section 5. Notices. All notices or other communications hereunder shall be sufficiently given and shall be deemed to have been received five days after deposit in the United States mail in registered or certified form, postage prepaid:

If to the City:	City of Costa Mesa 77 Fair Drive P.O. Box 1200 Costa Mesa, California 92628-1200 Attention: City Manager
If to the Authority:	Costa Mesa Public Financing Authority c/o City of Costa Mesa 77 Fair Drive P.O. Box 1200 Costa Mesa, California 92628-1200 Attention: Executive Director
If to the Trustee:	The Bank of New York Trust Company, N.A. 700 South Flower Street, Suite 500 Los Angeles, California 90071 Attention: Corporate Trust Services

The Authority, the City and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices or other communications will be sent.

Section 6. Captions. The captions or headings in this Agency Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision or section of this Agency Agreement.

Section 7. Execution in Counterparts. This Agency Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

Section 8. Amendment. The terms of this Agency Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by the Authority and the City, with the prior written consent of the Trustee and the Insurer for the 2007 Certificates. The City hereby irrevocably appoints the Authorized Representative of the City to act as its attorney-in-fact for purposes of providing the foregoing consent.

IN WITNESS WHEREOF, the parties hereto have executed this Agency Agreement as of the day and year first written above.

CITY OF COSTA MESA

By: _____
City Manager

ATTEST:

By: _____
Finance Director

COSTA MESA PUBLIC FINANCING AUTHORITY

By: _____
Executive Director

ATTEST:

By: _____
Treasurer