

1 WHEREAS, said CITY ORDINANCE contains provisions to control pollutants from
2 both existing and new urban development and significant redevelopment; and

3 WHEREAS, Section 9-1-90 (c) of those Codified Ordinances of the DISTRICT
4 relating to Storm Water Management and Urban Runoff provides that "the DISTRICT may,
5 upon designation by any city within COUNTY , and at no cost to DISTRICT, be named as
6 an AUTHORIZED INSPECTOR for that city"; and

7 WHEREAS, similar agreements have been previously executed in the past five
8 years. Commencing in 2002, 29 cities have executed the WATER QUALITY ORDINANCE
9 IMPLEMENTATION AGREEMENT. Subsequently, after the initial three year term, these
10 agreements were extended for additional 3 years by AMENDMENT NO. ONE to the original
11 agreements. The terms of these agreements and their related amendment will be
12 expiring; and

13 WHEREAS, in initiation of said program implementation, CITY now wishes to
14 contract with DISTRICT to serve as AUTHORIZED INSPECTOR pursuant to the CITY
15 ORDINANCE, and to pay DISTRICT for the full cost of providing those services; and

16 WHEREAS, DISTRICT is willing to provide such services to the extent allowed by
17 available staffing resources (See Section 1(g)and 2(a))and to accept payment from
18 CITY for the full cost of providing those services.

19
20 NOW, THEREFORE, the PARTIES hereto, in consideration of the mutual covenants
21 and agreements contained in this AGREEMENT, agree as follows:

22
23 SECTION 1. DISTRICT RESPONSIBILITIES

24 Upon request from designated CITY representatives, DISTRICT, upon availability of
25 staffing resources, is authorized to:

- 26 (a) Act as AUTHORIZED INSPECTOR on behalf of CITY and shall investigate compliance
27 with, detect violations of, and/or take actions pursuant to the CITY ORDINANCE,
28 generally including activities such as water pollution incident response, clean-
29 up and/or enforcement activities associated with the following:

- 1 (i) In response to specific pollutant releases originating from within CITY
2 limits;
- 3 (ii) In response to specific pollutant releases originating from within CITY
4 limits that are detected in DISTRICT facilities; and
- 5 (iii) In response to adverse findings of water quality monitoring that are
6 attributable to specific pollutants originating within CITY limits.
- 7 (b) Perform services in Section (a) of this AGREEMENT as set forth in the CITY
8 ORDINANCE and its accompanying Enforcement Consistency Guide;
- 9 (i) Notify designated CITY National Pollutant Discharge Elimination System
10 Permit representative of request for water pollution incident response,
11 clean-up and/or enforcement activities received from designated CITY
12 representatives and Departments;
- 13 (ii) Prepare annual list of investigations conducted on CITY'S behalf for CITY
14 to submit in the Annual Program Effectiveness Assessment Report to the
15 Regional Water Quality Control Board(s);
- 16 (c) Upon written request by the CITY;
- 17 (i) Provide to CITY all incident reports and related documents prepared in
18 connection with DISTRICT'S performance under this AGREEMENT and make such
19 records available for inspection by authorized representatives of CITY
20 during normal business hours;
- 21 (ii) Utilize services of outside consultants and contractors to aid in the
22 investigation, cleanup and/or enforcement activities undertaken pursuant to
23 this AGREEMENT. If this is required, DISTRICT shall utilize consultants
24 and contractors hired by the CITY under the CITY'S standing purchase order
25 agreements;
- 26 (d) Invoice CITY within forty-five (45) days of the signing of this AGREEMENT by the
27 DISTRICT Director for the initial annual pollution response on-call fee
28 identified in Exhibit A, prorated for the balance of the fiscal year ending June
29 30th from the date of AGREEMENT signing. For subsequent billing years, by June
30 30th of each year DISTRICT shall review and revise Exhibit A as necessary based on

1 the then current on-call labor rates, the number of cities contracting with
 2 DISTRICT for water quality ordinance services and the latest land area and
 3 population data as specified in the IMPLEMENTATION AGREEMENT. Thereafter,
 4 DISTRICT shall invoice CITY within 60 days of the beginning of each fiscal year
 5 (July 1) based on the revised Exhibit A.

6 (e) Invoice CITY on a monthly basis for all work performed by DISTRICT under this
 7 AGREEMENT on behalf of CITY. DISTRICT will not invoice any "PERSON", as defined
 8 in CITY ORDINANCE, identified as causing or contributing to a violation of said
 9 ORDINANCE. Invoice from DISTRICT to CITY shall include actual costs incurred by
 10 DISTRICT for labor, equipment and services. Said actual costs include overhead
 11 (indirect costs such as tools, computers, etc.) and burden (employee benefits).

12 (f) DISTRICT shall indemnify, defend with counsel approved by CITY, and hold CITY,
 13 its elected and appointed officials, officers, agents, employees and contractors
 14 free and harmless from any claim, cause of action, or liability whatsoever, based
 15 or asserted upon any act or omission of DISTRICT, its elected and appointed
 16 officials, officers, agents, employees and contractors, for property damage,
 17 bodily injury or death or any other element of damage of any kind or nature,
 18 relating to or in any way connected with or arising from the accomplishment of
 19 the services to be performed by DISTRICT under this AGREEMENT, except as provided
 20 for in Sections 2 (h) and 2 (i) below.

21 (g) Nothing in this AGREEMENT shall be interpreted as an assumption by DISTRICT of
 22 any obligations the CITY may have under law or applicable permits to implement a
 23 municipal NPDES stormwater program. This AGREEMENT is solely for the purpose of
 24 authorizing DISTRICT personnel to act as AUTHORIZED INSPECTOR for the CITY. This
 25 AGREEMENT creates no obligation to provide those services. AUTHORIZED INSPECTOR
 26 services will be provided only to the extent permitted by DISTRICT resources.

1 SECTION 2. CITY RESPONSIBILITIES:

2 CITY shall:

- 3 (a) Identify, in writing, the designated CITY National Pollutant Discharge
 4 Elimination System (NPDES) Permit and Authorized Inspector representatives that
 5 will be responsible for water pollution incident response, clean-up and/or
 6 enforcement activities when DISTRICT involvement is not requested, approved or
 7 available. The designations shall include representative names, titles,
 8 departments and business/after hours phone numbers;
- 9 (b) Designate in writing those CITY representatives authorized to submit service
 10 requests to DISTRICT on behalf of CITY. Any request from Orange County Fire
 11 Authority/CITY Fire Department and Orange County Sheriffs Department/CITY Police
 12 Department shall represent CITY approval. The designations shall include
 13 representative names, titles, departments and business/after hours phone numbers;
- 14 (c) Meet periodically with DISTRICT to discuss the services being provided, review
 15 individual cases, and ensure DISTRICT enforcement activities are consistent with
 16 CITY ORDINANCE and accompanying Enforcement Consistency Guide;
- 17 (d) Provide in writing any requests for incident reports or related documents
 18 prepared in connection with DISTRICT'S performance under this AGREEMENT (Section
 19 1 (c) i));
- 20 (e) Provide information in writing regarding any standing purchase order agreements
 21 issued by CITY for employment by DISTRICT of outside consultants and contractors
 22 (Section 1 (c) ii)). Information provided should include contractor/consultant
 23 contact information, purchase order number and services provided;
- 24 (f) Make payment to DISTRICT within thirty (30) days of receipt of annual pollution
 25 response on-call fee as identified in Exhibit A or monthly invoice from DISTRICT
 26 for work performed in accordance with this AGREEMENT and invoice any "PERSON", as
 27 identified in CITY ORDINANCE, identified as being responsible for violations of
 28 the water quality ordinance;
- 29 (g) Assume any and all liability for failure to approve needed work and expenditures
 30 to respond to pollutant releases;

1 (h) CITY shall indemnify, defend with counsel approved by DISTRICT, and hold
2 DISTRICT, its elected and appointed officials, officers, agents, employees and
3 contractors, free and harmless from any claim, cause of action or liability
4 whatsoever, based or asserted upon any act or omission of CITY, its elected and
5 appointed officials, officers, agents, employees and contractors for property
6 damage, bodily injury or death or any other element of damage of any kind or
7 nature, specifically relating to or in any way connected with or arising from the
8 extent and/or adequacy of investigation, or clean-up of pollutants on behalf of
9 CITY, performed by, on behalf of, or under the supervision of DISTRICT personnel,
10 acting in good faith and with due diligence in fulfillment of DISTRICT's
11 responsibilities pursuant to this AGREEMENT; and

12 (i) Where CITY staff is providing pollution response duties hereinunder, CITY shall
13 indemnify, defend with counsel approved by DISTRICT, and hold DISTRICT, its
14 elected and appointed officials, officers, agents, employees and contractors free
15 and harmless from any claim, cause of action, or liability whatsoever, based or
16 asserted upon any act of CITY, its elected and appointed officials, officers,
17 agents, employees and contractors, for property damage, bodily injury or death or
18 any other element of damage of any kind or nature, relating to or in any way
19 connected with or arising from the accomplishment of services performed by CITY
20 in implementing or enforcing CITY ORDINANCE to which DISTRICT was not a party of.
21

22 SECTION 3. GENERAL PROVISIONS

23 (a) The initial term for this AGREEMENT is for a period of one (1) year commencing
24 with the date of the execution of this AGREEMENT (Initial Term). The term of this
25 AGREEMENT will automatically extend for an additional year at the end of
26 the Initial Term of this AGREEMENT and each year thereafter unless either party
27 provides a written notice to other party no less than 6 months before the
28 expiration of the term of the AGREEMENT of its intent not to renew. Nothing in
29 this clause is to be interpreted, however, to limit the rights of the party to

1 terminate the AGREEMENT pursuant to the provisions of the Termination
2 Clause(Section 3 (b));

3 (b) Either party may terminate this AGREEMENT in advance of the termination date,
4 upon six (6) months written notice to the other party sent to the following
5 addresses:

6 DISTRICT:

7 Orange County Flood Control District

8 Attn: Director, Resources and Development Management Department

9 Post Office Box 4048

10 Santa Ana, California 92702-4048

11
12
13 CITY:

14 City of Costa Mesa

15 Attn: City Manager

16 77 Fair Dr.

17 Costa Mesa, California 92628-1200

18
19 Upon termination by either PARTY, DISTRICT shall inform the CITY of any ongoing
20 investigations prior to the termination date and return the prorated share of any
21 remaining annual pollution response on-call fees within forty-five (45) days
22 after the termination date for the fiscal year in which the termination occurs.
23 Upon termination it will be the responsibility of the CITY to complete any water
24 pollution incident response, clean-up and/or enforcement activities associated
25 with any ongoing investigations.

26 (c) PARTIES agree to fully cooperate with and assist one another in all matters
27 pertaining to losses arising from costs not reimbursed by any "PERSON", as
28 identified in CITY ORDINANCE, in performance of this AGREEMENT. If a claim is
29 made, or suit is brought against a PARTY to this AGREEMENT likely to be related
30 to the performance thereof, said PARTY shall immediately forward every claim,

1 demand, notice, summons or other process received by it to the other PARTY
2 hereto.

3 (d) If any part of this AGREEMENT is held, determined or adjudicated to be illegal,
4 void or unenforceable by a court of competent jurisdiction, the remainder of this
5 AGREEMENT shall be given effect to the fullest extent reasonably possible.

6 (e) No alteration or variation of the terms of this AGREEMENT shall be valid unless
7 made in writing and signed by the PARTIES hereto, and no oral understanding or
8 agreement not incorporated shall be binding on any of the PARTIES hereto.

9 (f) The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been
10 duly authorized and executed and constitutes the legally binding obligation of
11 their respective organization or entity, enforceable in accordance with its
12 terms.

13 IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on
14 the dates opposite their respective signatures:

15 ORANGE COUNTY FLOOD CONTROL DISTRICT,
16 a body corporate and politic,
17
18

19 Date: _____

By: _____

20 Director,
21 Resources & Development Management
22 Department
23

24 APPROVED AS TO FORM

25 COUNTY COUNSEL

26
27
28 Date: 12/7/2007

By:  _____

Deputy

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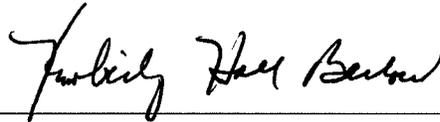
CITY OF COSTA MESA

Date: _____

By: _____

Mayor

APPROVED AS TO FORM:



City Clerk

City Attorney of Costa Mesa

Exhibit A
Water Quality Ordinance Implementation Agreement
Pollution Response Annual Fixed Cost Fee
FY 2007-2008****

Permittee	Population *	Area (sq. mi.) **	Weighted Average Share of Revenue (%)	Annual Fee*** FY 2007-2008
Aliso Viejo	44,924	6.92	1.113503219	\$547
Anaheim	342,410	49.89	8.299142308	\$4,076
Brea	39,560	11.98	1.368194047	\$672
Buena Park	81,349	10.55	1.885897552	\$926
Costa Mesa	113,134	15.83	2.699014928	\$1,326
Cypress	48,854	6.60	1.149972662	\$565
Dana Point	36,669	6.43	0.960363539	\$472
Fountain Valley	57,405	9.05	1.436523973	\$706
Fullerton	136,428	22.32	3.467492139	\$1,703
Garden Grove	171,765	17.92	3.695132965	\$1,815
Huntington Beach	201,000	26.64	4.697457385	\$2,307
Irvine	193,785	65.98	7.182586244	\$3,528
La Habra	61,789	7.36	1.389418324	\$682
La Palma	16,081	1.80	0.353999756	\$174
Laguna Beach	24,963	8.83	0.947017648	\$465
Laguna Hills	33,225	6.64	0.923765991	\$454
Laguna Niguel	66,178	14.79	1.942991759	\$954
Laguna Woods	18,334	3.04	0.468649664	\$230
Lake Forest	78,859	16.78	2.259721101	\$1,110
Los Alamitos	12,004	2.01	0.308133779	\$151
Mission Viejo	97,997	17.93	2.615675324	\$1,285
Newport Beach	83,361	24.64	2.84326713	\$1,396
Orange	137,801	25.78	3.71545714	\$1,825
Placentia	51,236	6.62	1.186167191	\$583
Rancho Santa Margarita	49,130	12.94	1.571540326	\$772
San Clemente	66,280	17.68	2.134808822	\$1,049
San Juan Capistrano	36,073	13.26	1.401432712	\$688
Santa Ana	351,322	27.35	6.945240284	\$3,411
Seal Beach	25,298	4.02	0.635155827	\$312
Stanton	38,761	3.09	0.771036018	\$379
Tustin	71,767	11.14	1.784452225	\$876
Villa Park	6,218	2.08	0.228024677	\$112
Westminster	92,408	10.05	2.014896247	\$990
Yorba Linda	66,794	19.82	2.283266487	\$1,121
County of Orange	120,174	175.55	13.32060061	\$6,543
OCFCD	0	0.00	10	\$4,912
TOTALS	3,073,336	683.310	100.00000	\$49,116

* Source: State of California, Department of Finance, E-1 City/County Population Estimates with Annual Percent Change January 1, 2005 and 2006, Sacramento, California May 2006. Available at: <http://www.dof.ca.gov/HTML/DEMOGRAP/ReportsPapers/Estimates/E1/documents/E-1table.xls>

** Source: RDMD - Geomatics. Area was calculated in miles using the dry land area figures and subtracting areas in each jurisdiction for national forests, state parks, airports, landfills and military installations as determined in the NPDES Implementation Agreement.

*** Annual Fee: is the District's on-call annual cost which is based the prior year's actual annual on-call staff pay divided by Permittee share based on NPDES Implementation Agreement cost share irrespective of the number of participating cities.

**** The District shall review and revise Exhibit A as necessary on June 30th of each year the based on the current on-call labor rates, the number of cities contracting with the DISTRICT for water quality ordinance services and the latest land area and population data (see Agreement Section 1(d)).