

Agreement D08-104

COOPERATIVE AGREEMENT FOR THE NEWPORT BAY WATERSHED AND THE CENTRAL WATERSHED  
MANAGEMENT AREA  
FOURTH AMENDMENT AND FULL RESTATEMENT OF COOPERATIVE AGREEMENT

THIS FOURTH AMENDMENT to the Cooperative Agreement is numbered \_\_\_\_\_ (hereinafter "COOPERATIVE AGREEMENT") and is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the County of Orange, the Orange County Flood Control District, the Cities of Irvine, Lake Forest, Newport Beach, Tustin, Santa Ana, Costa Mesa, the California Department of Fish and Game, The Irvine Company, the Regional Water Quality Control Board, Santa Ana Region and the Irvine Ranch Water District. These entities are hereinafter sometimes jointly referred to as the "PARTIES" and individually as "PARTY".

W I T N E S S E T H

WHEREAS, on September 30, 1983, a COOPERATIVE AGREEMENT was entered into by the County of Orange, the Cities of Irvine and Newport Beach, The Irvine Company, and the California Department of Fish and Game to implement the Comprehensive Stormwater Sediment Control Plan (hereinafter "PLAN") in the San Diego Creek-Newport Bay Watershed (hereinafter "NEWPORT BAY WATERSHED") and established the Newport Bay Watershed Executive Committee; and,

WHEREAS, the primary purpose of the PLAN is to reduce sedimentation of Newport Bay; and

WHEREAS, the sediment affecting Newport Bay which originates in natural open space lands as well as lands disturbed by man for agricultural and urban uses; and,

WHEREAS, if sedimentation of Newport Bay is not controlled, the State owned ecological preserve in upper Newport Bay may continue to be degraded and large amounts of sediment may be deposited in lower Newport Bay, thus impairing the valuable small boat, commercial and recreational land uses; and,

WHEREAS, the PARTIES have limited resources with which to address the implementation of the PLAN and it is recognized that any effective implementation of the PLAN will depend upon availability of funding sources at the regional, state and federal levels; and,

WHEREAS, on September 25, 1985, the COOPERATIVE AGREEMENT was amended to add the City of Tustin as a participant; and,

WHEREAS, on April 20, 1999, the COOPERATIVE AGREEMENT, then numbered D99-026, was amended to add the Orange County Flood Control District, the City of Lake Forest, the Regional Water Quality Control Board, Santa Ana Region, and the Irvine Ranch Water District as participants and the purpose of the agreements was expanded to include cooperative work on nutrient impairments and other common watershed issues in the NEWPORT BAY WATERSHED; and,

WHEREAS, since the last amendment of the COOPERATIVE AGREEMENT in 1999 a number of changes affecting water quality regulation, funding and governance have affected the NEWPORT BAY WATERSHED including:

1. Total Maximum Daily Loads (hereinafter "TMDL" or "TMDLs") have been approved by the Regional Water Quality Control Board, Santa Ana Region for fecal coliform on April 9, 1999, diazinon and chlorpyrifos on April 4, 2003, and organochlorine pesticides on September 7, 2007, and by the United States Environmental Protection Agency for toxic pollutants on June 14, 2002. Additional TMDLs are in development. The organochlorine pesticides TMDL recognizes that pollutants other than the organochlorine compounds, such as metals, pyrethrins or other emerging pollutants may pose the more real or significant threat to beneficial uses in the watershed and allows stakeholders to pursue an integrated approach to TMDL implementation through development and implementation of a work plan that encompasses all sources of water quality impairment; and,

2. On December 20, 2004, the Regional Water Quality Control Board, Santa Ana Region approved Order No. R8-2004-0021 regulating groundwater discharges in the NEWPORT BAY WATERSHED, resulting in the formation of the Nitrogen and Selenium Management Program to comprehensively address nitrogen and selenium issues; and,
3. On February 1, 2005, the Orange County Board of Supervisors, with input from cities and special districts, recommended the formation of three Watershed Management Areas, including a Central Watershed Management Area, comprised of the NEWPORT BAY WATERSHED and the Newport Coastal Streams Watershed, with the Newport Bay Watershed Executive Committee structure to serve as the model for governance of each Watershed Management Area; and,
4. The State of California has established requirements for Integrated Regional Water Management Plans as a basis for significant grant funding under Propositions 50 and 84 resulting in the preparation of the Central Orange County Integrated Regional and Coastal Watershed Management Plan in August 2007; and,

WHEREAS, the PARTIES desire to broaden the range of cooperation to incorporate the water quality regulation, funding and governance issues described above and to expand the geographic area to include the Newport Coastal Streams Watershed, consistent with the boundaries of the Central Watershed Management Area (see Exhibit 1); and,

WHEREAS, the PARTIES desire to amend and restate the COOPERATIVE AGREEMENT in its entirety; and,

WHEREAS, the PARTIES intend to continue to implement the PLAN unchanged under the amended and restated COOPERATIVE AGREEMENT,

NOW THEREFORE: The PARTIES hereto unanimously agree to amend and restate the COOPERATIVE AGREEMENT in its entirety as follows:

Section 1. Purpose. This Agreement is entered into for the purpose of providing a management framework for cooperation on sediment, water quality and water resource issues in the Central Watershed Management Area, including:

- a) Providing a forum to evaluate and assess progress toward implementing the PLAN prepared under the Federal 208 Water Quality Planning Program;
- b) Formulating project implementing agreements for the elements of the PLAN and to evaluate and assess the effectiveness of the various elements of the PLAN;
- c) Reviewing progress and providing direction on projects to address water quality impairments, including sediment, nutrients, fecal indicator bacteria, toxicity, and any emerging pollutants;
- d) Reviewing opportunities and providing direction for pollutant trading or offset programs;
- e) Reviewing opportunities and providing direction for grant funding through Integrated Regional Water Management Plans;
- f) Providing oversight for the Central Watershed Management Area and any updates of the Central Orange County Integrated Regional and Coastal Watershed Management Plan; and,
- g) Formulating project implementation agreements for any cost-shared projects (hereinafter "PROJECT IMPLEMENTATION AGREEMENTS", see Section 5).

Section 2. Additional Parties. It is recognized that there are other parties within the watershed that have responsibilities for controlling sediment, improving water quality and water resource management. These parties include the Cities of Costa Mesa, Laguna Hills, Laguna Woods, Orange, and Santa Ana, the California Department of Transportation, the U. S. Department of Defense, the Federal Aviation Administration, utilities, and owners of large undeveloped parcels of land. The PARTIES hereto agree to engage with these other parties, as appropriate, on the sediment, water

quality and water resource issues described above and one or more of these other parties may be requested to participate in future PROJECT IMPLEMENTATION AGREEMENTS. PARTIES may be added to this AGREEMENT with approval of the Executive Committee and upon execution of this AGREEMENT by the new PARTY.

Section 3. Executive Committee. Each of the PARTIES, except for the Orange County Flood Control District which shall be represented by the County, shall appoint a member and an alternate to an Executive Committee, to be called the Newport Bay Watershed Executive Committee. The members so appointed shall elect a chair and a vice chair to serve a two-year term. The Committee shall meet from time to time upon the request of the chair, but at least every six months. The Executive Committee shall be responsible for reviewing and reporting to the PARTIES as to whether adequate and reasonable progress is being made on sediment, water quality and water resource issues in the Central Watershed Management Area and recommending PROJECT IMPLEMENTATION AGREEMENTS. The Executive Committee may establish standing committees to support it in conducting its work.

The goals and desired outcomes of the work of the Executive Committee are to:

- a) Integrate and improve hydrologic functioning of the watershed to optimize flood protection, water conservation and water quality protection;
- b) Protect, enhance, restore and connect habitat in the watershed;
- c) Integrate economic development with watershed restoration efforts;
- d) Facilitate watershed stewardship to support watershed goals;
- e) Build and sustain effective relationships between watershed stakeholders to achieve common goals through positive communication, collaboration, consensus and coordination; and,

f) Create an effective, efficient, innovative, responsive, and transparent Executive Committee operation.

Section 4. COMPREHENSIVE STORMWATER SEDIMENTATION CONTROL PLAN. The PLAN consists of the following elements and schedules, updated to reflect current conditions:

Elements	Schedules
A. Improve agricultural land management practices High erosion areas Remaining areas	Completed Resource Conservation Plans Implementation ongoing
B. Improve construction Land management practices	Completed Grading Ordinance changes and training
C. Install and maintain in-channel basins	Completed construction (Implementation Agreement dated 9-24-84)
D. Install and maintain basins in Upper Newport Bay	Completed construction (Implementation Agreement dated 5-8-84)
E. Channel Stabilization Undeveloped areas: As condition of development Dedicated channels: Inventory of deficiencies Stabilization	Implementation ongoing Completed initial stabilization (additional stabilization ongoing)
F. Foothill basins Incorporation into drainage master plan Construction	Completed construction of 7 basins as part of planned development Concurrent stabilization of downstream channels
G. Monitoring Cooperative agreement Bay monitoring Develop program Implement	Implementation ongoing (Implementation Agreements dated 9-10-85, 9-2-86, 1-9-91, 8-20-96, 4-20-99)

The PARTIES hereto agree to use their best efforts to formulate agreements to implement the PLAN.

The Cities of Irvine, Lake Forest, Newport Beach, and Tustin and the County of Orange have and shall continue to consider adoption of programs and/or enforcement of ordinances within each agency's jurisdiction sufficient to implement Elements A and B of the PLAN. The intent of these efforts shall be to require use of the most cost effective measures for the management of sediment that is consistent with preservation of upper Newport Bay, as set forth in the PLAN.

Section 5 PROJECT IMPLEMENTATION AGREEMENTS. Implementation of any cost-shared projects to address sediment, water quality and water resource issues shall be accomplished through PROJECT IMPLEMENTATION AGREEMENTS. PROJECT IMPLEMENTATION AGREEMENTS for the PLAN shall designate a lead agency and shall provide for funding the anticipated construction and maintenance costs. The PARTIES to this COOPERATIVE AGREEMENT as well as other parties in the watershed may be participants in these PROJECT IMPLEMENTATION AGREEMENTS.

Section 6. Amendment. This Agreement may be amended only with the unanimous approval of all PARTIES.

Section 7. Termination. The term of this COOPERATIVE AGREEMENT shall commence upon the date when all PARTIES have executed this document and shall continue until three or more of the PARTIES have withdrawn as provided in Section 9 below.

Section 8. Project Funding. All PARTIES shall use their best efforts to aid the lead agencies designated in PROJECT IMPLEMENTATION AGREEMENTS in advocating for funding, including grants, to fund the cost-shared projects.

Section 9. Withdrawal of PARTIES. Any of the PARTIES to this COOPERATIVE AGREEMENT may withdraw by giving written notice of withdrawal to the other PARTIES to this COOPERATIVE AGREEMENT. The balance of the PARTIES

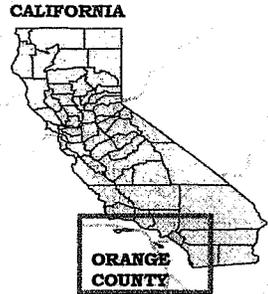
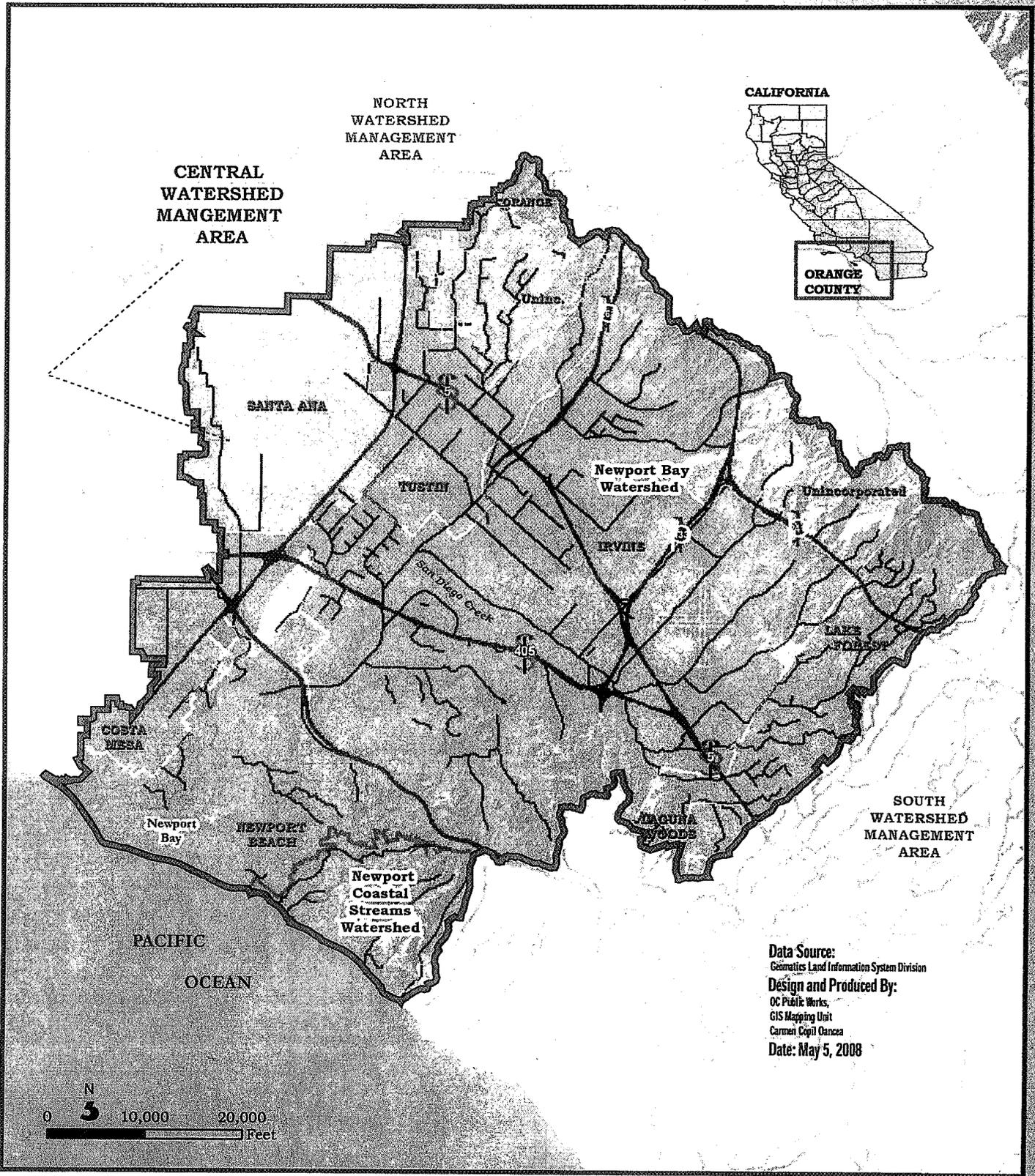
shall continue in the performance of the terms and conditions of this COOPERATIVE AGREEMENT unless and until the COOPERATIVE AGREEMENT is terminated as provided in Section 7 above.

Section 10. Status of Original Agreement. Upon approval of this AGREEMENT by all PARTIES, the original COOPERATIVE AGREEMENT of September 30, 1983, as amended on September 25, 1995 and April 20, 1999, will be superseded by this AGREEMENT.

Section 11. AGREEMENT Execution. This AGREEMENT may be executed in counterpart and the signed counterparts shall constitute a single instrument.

IN WITNESS WHEREOF, the PARTIES hereto have executed this COOPERATIVE AGREEMENT the day and year first above written.

# CENTRAL WATERSHED MANAGEMENT AREA



**Data Source:**  
 Geomatics Land Information System Division

**Design and Produced By:**  
 OC Public Works,  
 GIS Mapping Unit  
 Carmen Cipit Oancea

**Date:** May 5, 2008

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year first above written.

COUNTY OF ORANGE/ORANGE COUNTY FLOOD CONTROL DISTRICT

Date: \_\_\_\_\_.

By: \_\_\_\_\_  
Chairman of the Board of Supervisors

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

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

Date: \_\_\_\_\_.

By: \_\_\_\_\_  
Deputy County Counsel

CITY OF COSTA MESA

Date: \_\_\_\_\_, 2009

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of Costa Mesa

CITY OF IRVINE

Date: \_\_\_\_\_, 2009

ATTEST:

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney of Irvine

CITY OF LAKE FOREST

Date: \_\_\_\_\_, 2009

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of Lake Forest

CITY OF NEWPORT BEACH

Date: \_\_\_\_\_, 2009

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of Newport Beach

CITY OF SANTA ANA

Date: \_\_\_\_\_, 2009

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of Santa Ana

CITY OF TUSTIN

Date: \_\_\_\_\_, 2009

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of Tustin

THE IRVINE COMPANY

Date: \_\_\_\_\_, 2009

By: \_\_\_\_\_  
President of the Irvine Company

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for the Irvine Company

THE IRVINE RANCH WATER DISTRICT

Date: \_\_\_\_\_, 2009

By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for Irvine Ranch Water District

CALIFORNIA DEPARTMENT OF FISH AND GAME

Date: \_\_\_\_\_, 2009

By: \_\_\_\_\_  
Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for California Department of  
Fish and Game

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION

Date: \_\_\_\_\_, 2009

By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for California Regional Water Quality Control Board, Santa Ana Region