

AGREEMENT
PROVIDING FOR IMPLEMENTATION OF
THE LAKE COUNTY CLEAN WATER PROGRAM

THIS AGREEMENT, is made by and between the Lake County Flood Control and Water Conservation District (DISTRICT), County of Lake (COUNTY), City of Clearlake (CLEARLAKE) and City of Lakeport (LAKEPORT).

COUNTY, CLEARLAKE and LAKEPORT are hereinafter collectively referred to as "PARTIES" or individually as "PARTY".

RECITALS:

A. Amendments to the Clean Water Act (CWA) in 1987 added section 402(p), which established a framework for regulating storm water discharges under the National Pollutant Discharge Elimination System (NPDES) Program. Pursuant to Section 402 (p) of the CWA and EPA regulations, the Central Valley Regional Water Quality Control Board adopted State Water Resources Control Board (SWRCB) Water Quality Order No. 2003-0005, NPDES Permit No. CAS000004, defining the program that the PARTIES are required to develop and implement.

B. On February 19, 2002 the Lake County Stormwater Task Force was formed to:

- 1) Investigate individual vs. area-wide permits,
- 2) Identify joint efforts/individual efforts,
- 3) Estimate program costs,
- 4) Determine existing funding from existing programs,
- 5) Evaluate other funding options and establish an implementation plan.

Stormwater Task Force conclusions and recommendations to the Board of Supervisors and both City Councils were:

- 1) File for permit coverage as co-permittees under a single Storm Water Management Plan SWMP,
- 2) Utilize the DISTRICT for overall program coordination and management,
- 3) Each PARTY would be responsible for implementing the SWMP within their jurisdiction.

C. On October 14, 2003 the SWMP and Notice of Intent to file for permit coverage as co-permittees was approved by the PARTIES . Permit coverage commenced on October 27, 2003.

D. The SWMP is intended to be flexible in developing a Stormwater Program over a five year period with a fully functional Stormwater Program at the end of the five year period. At present, many departments of the PARTIES are performing duties that compliment the intent of the Stormwater Program. It is the intent of the PARTIES to work together to identify efforts already being implemented, joint efforts and

individual efforts needed to satisfy the requirements of NPDES Permit No. CAS000004.

- E. In and for the mutual interest of the PARTIES, the PARTIES and DISTRICT wish to enter into this Agreement for the purpose of ensuring continued participation, in terms of cost and administrative responsibilities for joint efforts on behalf of all PARTIES, and to ensure uniform implementation of NPDES Permit No. CAS000004.

NOW, THEREFORE, THE PARTIES HERETO AGREE, AS FOLLOWS:

Section 1. Lake County Clean Water Program

- 1.01 The Lake County Clean Water Program ("Program") is hereby implemented to fulfill the requirements of NPDES Permit No. CAS000004 as it exists, may be modified, or may be reissued in the future (hereinafter referred to as "NPDES Permit").
- 1.02 The Program is a collective effort that provides for implementation of area-wide activities that are designed to benefit all PARTIES.

Section 2. DISTRICT and PARTY Responsibilities

- 2.01 The Program will be administered by the DISTRICT under the following terms and conditions:
- A The DISTRICT will act as Program Manager for the Program. The Program Manager shall be responsible for Program management and administration, permit management, and technical program management all in accordance with the NPDES Permit, this Agreement, Program Bylaws, and as recommended by the Lake County Clean Water Program Advisory Council (hereinafter ADVISORY COUNCIL) in the best interest of the PARTIES as a whole and individually.
 - B The DISTRICT will be responsible for providing a secretary at all committee and subcommittee meetings to; take roll, record the meeting, distribute meeting minutes and setting the next agenda.
 - C The DISTRICT shall be responsible for submitting all required annual reports to the Central Valley Regional Water Quality Control Board by September 15th of each year.
 - D It is the responsibility of each PARTY to supply the DISTRICT with the necessary information to satisfy the annual reporting requirements as outlined in the Stormwater Management Plan and NPDES Municipal General Permit by August 15th of each year.
 - E Each PARTY shall submit the appropriate fee, payable to the State Water Resources Control Board, to the DISTRICT, by September 1st of each year.

- F Each Party shall designate a Stormwater Program Coordinator to represent their jurisdiction with respect to this Agreement.
- G Each PARTY shall be responsible for implementing the Stormwater Management Plan within their jurisdiction as recommended by the ADVISORY COUNCIL, and as adopted by the PARTIES.
- H Each Party agrees to participate in ADVISORY COUNCIL meetings, Program Workgroup meetings, and other required meetings of the PARTIES related to the Program.
- I Each Party agrees to individually address inter-agency issues, agreements or other cooperative efforts within their jurisdiction.

2.02 This Agreement does not restrict the PARTIES from the ability to individually (or collectively) request NPDES Permit modifications and/or initiate NPDES Permit appeals for permit provisions to the extent that a provision affects an individual party (or group of PARTIES). However, any such PARTY (or PARTIES) shall make reasonable efforts to provide advance notice of their action to the other PARTIES and allow them to comment upon or join in their action before proceeding.

Section 3. Lake County Clean Water Program Advisory Council

- 3.01 The ADVISORY COUNCIL is hereby created to make recommendations for overall Program management and coordination, strategic planning, review, budget considerations and conflict resolution with respect to the NPDES Permit on behalf of all PARTIES for the Program.
- 3.02 ADVISORY COUNCIL recommendations adopted by the County Board of Supervisors and both City Councils shall become binding upon all PARTIES.
- 3.03 The ADVISORY COUNCIL shall ensure a comprehensive public education and outreach / involvement and participation program on behalf of all Parties. The Program's Public Education, Outreach and Participation Workgroup will be responsible for developing the original materials; and, the PARTIES shall be responsible for participating in the costs of production and distribution.
- 3.04 The ADVISORY COUNCIL shall ensure the implementation of a comprehensive illicit discharge detection and elimination program on behalf of all Parties. The Program's Illicit Discharge Detection and Elimination Workgroup will be responsible for developing a program for field inspection and investigation activities for unauthorized connections and illegal dumping. The PARTIES shall be responsible for implementing the program within their jurisdiction.
- 3.05 The ADVISORY COUNCIL shall ensure the implementation of a comprehensive program for new development and construction activities specifically focusing on

soil erosion and sedimentation practices, post-construction facilities and developing financial mechanisms needed to maintain such facilities. The Program's Construction Site Stormwater Runoff Control Workgroup and Post Construction Stormwater Management Workgroup will be responsible for developing the program. The PARTIES shall be responsible for implementing the program within their jurisdiction.

- 3.06 The ADVISORY COUNCIL shall ensure the implementation of a comprehensive program for pollution prevention/good housekeeping for municipal operations on behalf of all Parties. The Program's Municipal Operations Workgroup will be responsible for developing the program. The PARTIES shall be responsible for implementing the Program within their jurisdiction.
- 3.07 The ADVISORY COUNCIL shall give annual updates to the County Board of Supervisors and both City Councils.
- 3.08 Meetings of the ADVISORY COUNCIL shall be conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.) Except for official meetings of the ADVISORY COUNCIL, nothing herein shall be interpreted to require meetings between staff members of the individual PARTIES (including designated representatives of the PARTIES) to be subject to the Brown Act, where the Brown Act would not otherwise apply. Each PARTY is individually responsible for ensuring that it complies with the Brown Act.
- 3.09 The membership of the ADVISORY COUNCIL shall consist of seven members as follows; one designated representative from each PARTY, one representative from the DISTRICT and three Stormwater Program Coordinators. One alternative representative may be appointed by each PARTY and DISTRICT.
- 3.10 The ADVISORY COUNCIL may as necessary adopt and revise Bylaws for its governance.
- 3.11 The ADVISORY COUNCIL may periodically re-evaluate and make recommendations to the PARTIES concerning reallocation of the proportion of program funds that each PARTY shall pay.
- 3.12 The ADVISORY COUNCIL shall recommend timelines and budgets for completion of Program tasks.

Section 4, Program Workgroups

- 4.01 The Parties agree that the following Storm Water Program Workgroups are hereby formed that will be responsible for evaluating, developing and coordinating specific portions of the Program on behalf of all PARTIES. Workgroup recommendations are presented to the ADVISORY COUNCIL who will then review and present recommendations to the County Board of Supervisors and both City Councils for

final approval. It is the responsibility of each PARTY to implement the Program as recommended by the Program Working Groups and ADVISORY COUNCIL and as adopted by the County Board of Supervisors and both City Councils.

- A. Public Education, Outreach and Participation Workgroup (PEOP) is responsible for development of materials and products, technical workshops, marketing, public outreach and public involvement with input from the other workgroups as appropriate.
- B. Illicit Discharge Detection and Elimination Workgroup (IDDE) is responsible for the development and implementation of a program to detect, address and/or eliminate illicit discharges including illegal dumping.
- C. Construction Site Stormwater Runoff Control Workgroup (CON) is responsible for development and implementation of a program to control the discharge of pollutants from construction sites.
- D. Post Construction Stormwater Management Workgroup (PCON) is responsible for the development and implementation of long term development measures for post construction stormwater management in new development and redevelopment projects.
- E. The Construction Stormwater Management Workgroup and the Post Construction Stormwater Management Workgroup shall meet concurrently.
- F. Municipal Operations Workgroup (MUNI) is responsible for evaluating municipal maintenance activities and developing a program to prevent the discharge of pollutants from these activities.

Section 5. Program Costs Participation and Allocation

- 5.01 At present there is no program budget for this federally mandated unfunded program.
- 5.02 All program costs specific to the particular needs of the PARTIES, not related to the Program on behalf of all PARTIES, shall be borne by that PARTY.
- 5.03 Program budgets shall be proposed by the appropriate workgroups and presented to the ADVISORY COUNCIL for recommendation to the County Board of Supervisors and both City Councils for final approval.
- 5.04 A collective budget for those aspects of the Program that are to be shared by all PARTIES of the Program (Program Budget) shall be developed on an annual basis and presented to the County Board of Supervisors and both City Councils for approval. The Budget shall include a Contingency/Reserve Fund which shall not exceed ten percent (10%) of the operating costs of the adopted Budget.

- 5.05 All mutual Program costs shall be allocated on population numbers annually obtained from the State of California Department of Finance. The population data published in January of each year will be used to form the cost allocations for the following fiscal year. (See EXHIBIT "A" for the 2003/2004 & 2004/2005 Fiscal Year Allocations)
- 5.06 The PARTIES shall each pay a yearly assessment by August 1st of each year into a fund established for Program operations for their assigned portion of the Program Budget for mutual program efforts . The proportionate share of the Program Budget that each PARTY shall pay is shown in the schedule marked Exhibit A hereto and incorporated by reference herein.
- 5.07 Except as provided in Section 6.03, the ending fund balance at the close of each fiscal year shall be credited to the PARTIES share of the next fiscal year's costs on a prorata basis. Likewise, any unanticipated costs shall be paid in accordance with the PARTIES defined participation rates.

Section 6. Term of Agreement

- 6.01 The term of this Agreement shall commence on the date the last duly authorized representative of the PARTIES executes it.
- 6.02 This Agreement shall have a term of five (5) years.
- 6.03 Any PARTY or the DISTRICT may terminate its participation in this Agreement by giving the other PARTIES at least thirty (30) day written notice. Termination shall be effective on the fiscal year following notification. The terminating PARTY will bear the full responsibility for its compliance with the NPDES Permit, commencing on the next fiscal year after it terminates its participation, including its compliance with both community-specific and program-wide responsibilities. The terminating party will be reimbursed for any unexpended funds in accordance with the PARTIES defined participation rates.

Section 7. General Legal Provisions

- 7.01 This Agreement may be amended by unanimous written agreement of the PARTIES and DISTRICT.
- 7.02 This Agreement may be executed and delivered in any number of copies ("counterpart") by the PARTIES, including by means of facsimile. When each PARTY has signed and delivered at least one counterpart to the Program, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES hereto.

7.03 No PARTY shall, by entering into this Agreement or participating in the ADVISORY COUNCIL, assume or be deemed to assume responsibility for any other PARTY in complying with the requirements of the NPDES Permit. This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed to be for the benefit of any third party and may not be enforced by any third party, including, but not limited to, the EPA, the SWRCB, Central Valley RWQCB and North Coast RWQCB, or any person acting on their behalf or in their stead.

7.04 In lieu of and notwithstanding the prorata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by a PARTY shall not be shared prorata but instead the PARTIES agree that pursuant to Government Code Section 895.4, each of the PARTIES hereto shall fully defend, indemnify and hold harmless each of the other PARTIES from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts of omissions or willful misconduct of the indemnifying PARTY, its officers agents or employees, under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit. No PARTY, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability incurred by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit.

7.05 In the event that suit shall be brought by any PARTY to this contract arising out of their participation in this Agreement, the PARTIES agree that venue shall be exclusively vested in either the state courts of the County of Lake, or where otherwise appropriate, in the United States District Court, Northern District of California.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement on the day and year set fourth by the PARTIES signature block.

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DISTRICT:

LAKE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____
Chair, Board of Directors

DATED: _____

APPROVED AS TO FORM:
CAMERON L. REEVES
County Counsel

ATTEST:
KELLY F. COX
Clerk of the Board

By: _____

By: _____

PARTY:

COUNTY OF LAKE

By: _____
Chair, Board of Supervisors

DATED: _____

APPROVED AS TO FORM:
CAMERON L. REEVES
County Counsel

ATTEST:
KELLY F. COX
Clerk of the Board

By: _____

By: _____

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PARTY:

CITY OF LAKEPORT

By: _____
Willis H. Bruns, Mayor

DATED: _____

APPROVED AS TO FORM:
City Attorney

By: _____
Steven J. Brookes, City Attorney

PARTY:

CITY OF CLEARLAKE

By: _____
Mayor, City Council

DATED: _____

APPROVED AS TO FORM:
City Attorney

By: _____

EXHIBIT A

**LAKE COUNTY CLEAN WATER PROGRAM
SCHEDULE OF COST-SHARING PROPORTIONS**

Jurisdiction	Proportional Share
County of Lake _____	69.74%
City of Clearlake _____	22.1%
City of Lakeport _____	8.16%
TOTAL _____	100%

CALIFORNIA DEPT. OF FINANCE POPULATION FIGURES

Jurisdiction	2003
County of Lake	61,300
Clearlake	13,550
Lakeport	5,000
Unincorporated	42,750