

**AGREEMENT  
PROVIDING FOR IMPLEMENTATION AND MAINTENANCE OF  
THE LAKE COUNTY CLEAN WATER PROGRAM**

THIS AGREEMENT, is made by and between the Lake County Watershed Protection 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 stormwater 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. This order has since been amended by order to be NPDES Permit No. CAS000004 WQ 2015-0133-EXEC, ORDER WQ 2016-0069-EXEC, WQ ORDER 2017-XXXX-DWQ, ORDER WQ 2018-0001-EXEC, AND ORDER WQ 2018-0007-EXEC, and will continue to be amended or continued as appropriate.
- 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; and
  - 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 Stormwater 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. Updated permit coverage became effective on July 1, 2013.

- 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 complement the intent of the stormwater program. It is the intent of the PARTIES to work together to identify joint and individual efforts already being implemented and maintain those efforts as needed to satisfy the requirements of NPDES Permit No. CAS000004, its amended work orders and any of the continuing, replaced, or amended permits that serve a similar function.
- 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 and its amended work orders.

**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 and its amended work orders 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 Management Council (hereinafter PROGRAM MANAGEMENT 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 set 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 15<sup>th</sup> 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 15<sup>th</sup> of each year.
  - E. Each PARTY shall submit the appropriate fee, payable to the State Water Resources Control Board, to the DISTRICT, by September 1<sup>st</sup> 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 PROGRAM MANAGEMENT COUNCIL, and as adopted by the PARTIES.
  - H. Each PARTY agrees to participate in PROGRAM MANAGEMENT COUNCIL meetings, any derived 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. Modifications / appeals that are granted need to be reported to ALL PARTIES and PROGRAM MANAGEMENT COUNCIL so that program reporting is accurate.

### Section 3. Lake County Clean Water Program Management Council

- 3.01 The PROGRAM MANAGEMENT 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 The PROGRAM MANAGEMENT COUNCIL provides programmatic objectives and procedures for workgroups and program elements in the by-laws created by and for the PROGRAM MANAGEMENT COUNCIL.

- 3.03 The PROGRAM MANAGEMENT COUNCIL recommendations adopted by the County Board of Supervisors and both City Councils shall become binding upon all PARTIES.
- 3.04 PROGRAM MANAGEMENT COUNCIL will agree to convene at a minimum four times annually. Program workgroups/elements will be discussed as lead topics on a rotating basis at each meeting as needed to accomplish the goals of the PROGRAM MANAGEMENT COUNCIL as stated in 3.01.
- 3.05 The PROGRAM MANAGEMENT COUNCIL shall give annual updates to the County Board of Supervisors and both City Councils.
- 3.06 Meetings of the PROGRAM MANAGEMENT COUNCIL shall be conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.). Except for official meetings of the PROGRAM MANAGEMENT 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.
- 3.07 The membership of the PROGRAM MANAGEMENT COUNCIL shall consist of seven members as follows: one designated representative from each PARTY; one representative from the DISTRICT; and a Stormwater Program Coordinator from each PARTY. One alternative representative may be appointed by each PARTY and DISTRICT.
- 3.08 The PROGRAM MANAGEMENT COUNCIL may as necessary adopt and revise Bylaws for its governance.
- 3.09 The PROGRAM MANAGEMENT COUNCIL may periodically re-evaluate and make recommendations to the PARTIES concerning reallocation of the proportion of program funds that each PARTY shall pay.
- 3.10 The PROGRAM MANAGEMENT COUNCIL shall recommend timelines and budgets for completion of Program tasks.

#### Section 4. Program Costs Participation and Allocation

- 4.01 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.
- 4.02 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 by February 1st and presented to the County Board of Supervisors and both City Councils for final

approval 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.

- 4.03 All mutual Program permit 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 2017/2018 Fiscal Year Allocations)
- 4.04 The PARTIES shall each pay a yearly assessment by August 1<sup>st</sup> 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.
- 4.05 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 pro-rata basis. Likewise, any unanticipated costs shall be paid in accordance with the PARTIES' defined participation rates.

#### Section 5. Term of Agreement

- 5.01 The term of this Agreement shall commence on the date the last duly authorized representative of the PARTIES executes it.
- 5.02 This Agreement shall have a term of ten (10) years.
- 5.03 Any PARTY or the DISTRICT may terminate its participation in this Agreement by giving the other PARTIES at least thirty (30) days 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 6. General Legal Provisions

- 6.01 This Agreement may be amended by unanimous written agreement of the PARTIES and DISTRICT.
- 6.02 This Agreement may be executed and delivered in any number of copies ("counterpart") by the PARTIES, including by means of facsimile or electronic mail. 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.

6.03 No PARTY shall, by entering into this Agreement or participating in the PROGRAM MANAGEMENT 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.

6.04 In lieu of and notwithstanding the pro-rata 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 pro-rata 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.

6.05 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 forth by the PARTIES' signature block.

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**DISTRICT:**

**LAKE COUNTY WATERSHED PROTECTION DISTRICT**

By: \_\_\_\_\_  
Chair, Board of Directors

DATED: \_\_\_\_\_

APPROVED AS TO FORM:  
ANITA L. GRANT  
County Counsel

ATTEST:  
CAROL J. HUCHINGSON  
Clerk of the Board

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

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

**PARTY:**

**COUNTY OF LAKE**

By: \_\_\_\_\_  
Chair, Board of Supervisors

DATED: \_\_\_\_\_

APPROVED AS TO FORM:  
ANITA L. GRANT  
County Counsel

ATTEST:  
CAROL J. HUCHINGSON  
Clerk of the Board

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

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

**PARTY:**

**CITY OF LAKEPORT**

By: \_\_\_\_\_  
Tim Barnes, Mayor

DATED: \_\_\_\_\_

APPROVED AS TO FORM:  
City Attorney

By: \_\_\_\_\_  
David Ruderman, City Attorney

**PARTY:**

**CITY OF CLEARLAKE**

By: \_\_\_\_\_  
Nick Bennet, Mayor

DATED: \_\_\_\_\_

APPROVED AS TO FORM:  
Ryan Jones, City Attorney

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



## EXHIBIT A

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

Jurisdiction	Proportional Share 2018
County of Lake_____	67.7%
City of Clearlake_____	24.5%
City of Lakeport_____	7.9%
TOTAL_____	100%

#### CALIFORNIA DEPT. OF FINANCE POPULATION FIGURES

Jurisdiction	2017	2018
County of Lake	64,740	65,081
Clearlake	16,151	15,917
Lakeport	5,125	5,134
Unincorporated	43,464	44,030