

AGREEMENT FOR COSTA MESA SANITARY DISTRICT VEHICLE MAINTENANCE SERVICES

THIS AGREEMENT is made and effective as of _____, 2010, between the Costa Mesa Sanitary District, a sanitary district ("District") and the City of Costa Mesa, a municipality ("City"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on _____, 2010, and shall remain and continue in effect until tasks described herein are completed, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

City shall perform the tasks described and set forth in **Paragraph 3**. City shall complete the tasks according to the schedule of performance which is also set forth in **Paragraph 3**.

3. PERFORMANCE

City shall at all times faithfully, competently and to the best of his /her/ its ability, experience, and talent perform all tasks described herein. City shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of City hereunder in meeting its obligations under this Agreement.

A. Upon District request, City shall perform maintenance on the District vehicles and equipment identified in **Exhibit A**, which may be amended if and when the District vehicle fleet expands.

B. Upon District request, City shall perform the following services on District vehicles and equipment:

1. Preventive Maintenance (PM) that consist of the following tasks:

(a) Change lube, oil and filter on main engine and auxiliary engine(s) as applicable per manufacturer's recommendation.

(b) Chassis lubrication at all points and check drive belts, battery and hoses for maintenance or appropriate replacement as needed;

(c) Brake inspection;

(d) Inspect for any possible fluid leaks and top-off all fluids for engine and transmission oil, coolant, brakes, power steering and windshield washers;

(e) Check and replace windshield wiper blades as necessary;

(f) Check wheel bearings, tire pressure, wheel conditions including alignment and balancing, axle-seals and recommend corrective action above and beyond lubrication;

(g) Inspect for any possible electrical shorts, including light bulbs;

(h) Miscellaneous safety inspection; including all required inspections to meet all DOT requirements.

(i) Other corrective maintenance services as requested / needed.

2. Light duty and utility vehicles are due for PM when they have traveled 3,000 miles or surpassed three months of service, whichever comes first.

3. Heavy duty vehicles are due every 90 days as per DOT regulation, or three hundred (300) hours of operation, whichever comes first.

4. During PMs if it is noticed that a District vehicle needs new brakes, tires, major electrical improvements, or other necessary repairs, the PM form will become a repair work order, at which time the City will notify the District in writing or by e-mail to obtain authorization to proceed before the repair is performed, as required by California State law. City will not perform the repair until receiving approval from District authorized personnel in writing or e-mail. City will also notify District of the estimated downtime before completing the repair.

5. Transmission service on heavy duty vehicles will be performed based on manufacturer's recommendation; every 3,000 hours or 3 years, whichever comes first if serviced with "Transynd" (Allison Synthetic long life automatic transmission fluid), or 300 hours or once a year, whichever comes first, if serviced on standard automatic transmission fluid

6. Cooling system shall be serviced and coolant replaced at manufacturer's recommended interval.

7. Hydraulic systems in heavy duty vehicles shall be inspected every 1,000 hours of operation and replaced at manufacturer's recommended interval.

8. Inspect all auxiliary equipment as required per manufacturer's recommendations. Inspect the operational portion of sewer cleaning truck to include the vacuum impeller, auxiliary engine, cooling system, fuel/air/oil filters, and other associated equipment and systems.

9. CMSD will obtain carrier identification number, when applicable from the California Highway Patrol (CHP) by completing a "Motor Carrier Profile" form CHP 362 and submit to the CHP. Coordinate Biennial Inspection of Terminals (B.I.T.) inspections with the CHP every 90 days, in which the CMSD will maintain the required 'pull notice program' and 'pre-trip' inspection record keeping. City will not be responsible for record keeping associated with those programs. City personnel will be available to assist during any required inspections; standard labor rates will apply.

10. PM Notification Procedures – City will provide electronic notifications to District personnel at least 30 days before PM is due to schedule a time and day for which District vehicle can be delivered to the City's garage.

11. Reports – Upon request from the District, City will provide District with computerized maintenance management reports for each vehicle. Reports may include, but are not limited to work history, downtime history, or other information currently available from the City's "Fleet Anywhere" software program.

12. All CMSD vehicles to be delivered to City Corporation Yard and picked up by CMSD personnel.

13. Any required travel to outside vendors will be performed by CMSD personnel, unless approved in advance by CMSD for City personnel transportation, which will be charged at standard labor rates.

14. No fuel will be provided by the CITY OF COSTA MESA.

15. All legally mandated requirements (Smog testing, Opacity testing, Diesel Particulate Filters, CHP B.I.T. inspections, etc.) will be performed by CMSD personnel, unless otherwise requested by or approved by CMSD for City personnel to coordinate. Standard labor rates will apply.

16. Towing of inoperable CMSD vehicles to be scheduled by and charged to CMSD, unless CMSD requests this service by City. City to charge actual costs for tow service to CMSD.

17. City personnel called out to perform repairs in the field either during or after hours will be charged from the time of receiving the call at the agreed upon hourly rate. After hours calls will be charged at the rate of time and one half (1 ½) for a minimum of two hours.

18. City personnel will not perform inspections or repairs of any lifting or hoisting devices, cranes or other specialty lifting equipment as part of this Agreement.

19. City will charge District accordingly for disposal of waste tires, oils and those items that are subject to regulatory disposal guidelines.

4. DISTRICT MANAGEMENT

District's **Operations Manager** shall represent District in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by City, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to City. The District's General Manager shall be authorized to act on District's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change City's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The District agrees to pay the City monthly, in accordance with the labor rate of **\$73.20** per hour as per industry standard Flat Rate Manual for services rendered.

The labor rate charged to the District by the City may be reviewed by the City one time each fiscal year to determine if any changes in actual costs incurred by the City for providing the services covered by the Agreement warrant an increase in the labor rate. Should the City determine that an increase is justified the City shall make a written request to the District thirty days prior to the start of the proposed increase. The District retains the right to deny and/or negotiate any rate increase to the satisfaction of both parties. The District shall, in writing, provide notice of acceptance or request negotiation prior to the expiration of the thirty day notice period. Lack of response by District by the end of the thirty day period shall be considered acceptance of the proposed increase

All unique repairs such as welding, fabrication, extraction of broken studs/bolts will be charged on an hourly basis. In addition, the District agrees to pay for direct costs the City paid for procuring parts and/or outsourcing services to a private vendor, with prior CMSD approval.

(b) City shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the District General Manager. City shall be compensated for any additional services in the amounts and in the manner as agreed to by District General Manager and City at the time District's written authorization is given to City for the performance of said services. The District General Manager may approve additional work not to exceed the greater of fifteen-thousand dollars (\$15,000.00) or two percent (2%) of the total annual contract sum. Any additional work in excess of this amount shall be approved by the Board of Directors.

(c) City will submit invoices for actual services performed including parts and labor. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the District disputes any of City's fees it shall give written notice to City within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The District may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the City at least ten (10) days' prior written notice. Upon receipt of said notice, the City shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the District suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) The City may at any time, for any reason, with or without cause, terminate this Agreement, by serving upon the District at least thirty (30) days' prior written notice.

(c) In the event this Agreement is terminated pursuant to this Section, the District shall pay to City the actual value of the work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, the City will submit an invoice to the District pursuant to Section 5.

7. DEFAULT OF CITY

(a) The City's failure to comply with the provisions of this Agreement shall constitute a default. In the event that City is in default for cause under the terms of this Agreement, District shall have no obligation or duty to continue compensating City for any work performed after the date of expiration of the cure period set out in subsection 7(b) hereof as to such default and District can terminate this Agreement immediately by written notice to the City. If such failure by the City to make progress in the performance of work hereunder arises out of causes beyond the City's control, and without fault or negligence of the City, it shall not be considered a default.

(b) If the District General Manager or his/her delegate determines that the City is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the City a written notice of the default. The City shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the City fails to cure its default within such period of time, the District shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) City shall maintain complete and accurate records with respect **to vehicle maintenance by listed vehicle** and other such information required by District that relates to the performance of services under this Agreement. City shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. City shall provide free access to the representatives of District or its designees at reasonable times to such books and records; shall give District the right to examine and audit said books and records; shall permit District to make transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement.

(b) Upon completion, termination or suspension of this Agreement all **records of vehicle maintenance by listed vehicle** and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the District and may be used, reused or otherwise disposed of by the District without the permission of the City, subject to the Public Records Act. All **vehicle maintenance records by listed vehicle** will be transferred to the follow-on agreement with the current City or other agency as determined to be in the best interest of the District. With respect to computer files, City shall make available to the District, at the City's office and upon reasonable written request by the District, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer data files.

9. INDEMNIFICATION

(a) The City shall indemnify and defend the District from any and all claims,

demands, liabilities, damages, losses, costs and expenses, including attorney's fees arising from:

1. The repair work done on District vehicles.
2. Bodily injury or property damage caused by the intentional or negligent driving, test driving or moving of the vehicles while the vehicles are in the possession of City personnel.
3. Injuries to City employees who work on District vehicles, except as they may be caused by the negligence or intentional misconduct of District employees or agents.
4. Loss or damage to District vehicles while in possession of City personnel except that such liability shall be limited to that of a bailee who fails to take reasonable steps to protect such vehicles, including theft and fire.
5. Bodily injury or property damage to the extent caused by City equipment failure.
6. Improper disposal by City of hazardous wastes, oils, lubricants or tires that emanate from District vehicles.

(b) District shall indemnify and defend the City from any and all claims, demands, liabilities, damages, losses, costs and expenses, including attorney's fees arising from:

1. Acts of District employees or agents in bringing the vehicles onto City property that cause damage to persons or property by intentional or negligent act.
2. Acts of District employees or agents in operating District vehicles before or after any services performed by City on said vehicles.

10. INSURANCE

City procures and administers self-insured general liability and environmental insurance programs. District procures and administers self-insured general liability and environmental insurance programs.

11. INDEPENDENT

(a) City is and shall at all times remain as to the District a wholly independent public entity. The personnel performing the services under this Agreement on behalf of City shall at all times be under City's exclusive direction and control. Neither District nor any of its officers, employees, or agents shall have control over the conduct of City or any of City's officers, employees, or agents, except as set forth in this Agreement. City shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the District. City shall not

incur or have the power to incur any debt, obligation, or liability whatever against District, or bind District in any manner.

(b) No employee benefits shall be available to City in connection with the performance of this Agreement. Except for the fees paid to City as provided in the Agreement, District shall not pay salaries, wages, or other compensation to City for performing services hereunder for District. District shall not be liable for compensation or indemnification to City for injury or sickness to City's employees arising out of performing services hereunder, except that resulting from District's negligence or intentional misconduct.

12. LEGAL RESPONSIBILITIES

The City shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The City shall at all times observe and comply with all such laws and regulations. All legally mandated requirements (Smog testing, Opacity testing, Diesel Particulate Filters, CHP B.I.T. inspections, etc.) are the responsibility of CMSD.

The District, and its officers and employees, shall not be liable at law or in equity for failure of the City to comply with this Section.

13. UNDUE INFLUENCE

City declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the Costa Mesa Sanitary District in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement or financial inducement. No officer or employee of the Costa Mesa Sanitary District will receive compensation, directly or indirectly, from City, or from any officer, employee or agent of City, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the District to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of District, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

15. RELEASE OF INFORMATION / CONFLICTS OF INTEREST

(a) Except as otherwise provided by law, including the Public Records Act, all information gained by City in performance of this Agreement shall be considered confidential and shall not be released by City without District's prior written authorization. City, its officers, employees, agents or subcontractor, shall not without written authorization from the District General Manager or unless requested by the District Counsel, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the District. Response to a subpoena, court order or Public Records Act request shall not be considered "voluntary" provided City gives District notice of such court order, subpoena or request.

(b) City shall promptly notify District should City, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the District. District retains the right, but has no obligation, to represent City and/or be present at any deposition, hearing, or similar proceeding. City agrees to cooperate fully with District and to provide the opportunity to review any response to discovery requests provided by City. However, District's right to review any such response does not imply or mean the right by District to control, direct, or rewrite said response.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To District: Costa Mesa Sanitary District
628 West 19th St
Costa Mesa, CA 92627
Attn: District Clerk

To City: City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: City Clerk

17. GOVERNING LAW

The District and City understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this

Agreement shall take place in the municipal, superior or federal district court with jurisdiction over the Costa Mesa Sanitary District and the City of Costa Mesa.

18. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

19. MODIFICATION

This Agreement may not be modified unless in writing and signed by the parties' representatives with legal authority to make such modifications.

20. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of City warrants and represents that he/she has the authority to execute this Agreement on behalf of the City and has the authority to bind City to the performance of its obligations hereunder. The person or persons executing this Agreement on behalf of District warrants and represents that he/she has the authority to execute this Agreement on behalf of the District and has the authority to bind District to the performance of its obligations hereunder

21. INTERPRETATION

In the event of conflict or inconsistency between this Agreement and any other document, including any proposal or Exhibit hereto, this Agreement shall control unless a contrary intent is clearly stated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

COSTA MESA SANITARY DISTRICT

CITY OF COSTA MESA

General Manager

City Manager

ATTEST:

ATTEST:

District Clerk

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

District Counsel

City Attorney

Exhibit A

District Vehicles and Equipment, as of July 1, 2010

Vehicles

1. 1990 heavy duty Ford diesel 4,000 gallon water truck
2. 1992, heavy duty single axle Kenworth diesel Vactor 2110 combination sewer cleaning truck
3. 2002 one ton Chevrolet diesel 3500 Silverado crane service truck
4. 2008 ¾ ton Chevrolet diesel 2500 Silverado pickup truck

Equipment

1. 1998 Lukes Diesel Trailer Mounted Generac Generator Model GR190;
2. 1998 Lukes Diesel Trailer Mounted Generac Generator Model GR85;
3. 2008 trailer mounted by-pass pump
4. 2010 trailer mounted by-pass pump