

COUNCIL MEETING
November 14, 2006

Honorable Mayor and Members
of the Torrance City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Fire Department – Amend agreement for Unified Hazardous Waste and Materials Management Regulatory Program. Expenditure: None.

RECOMMENDATION

The Fire Chief recommends that the City Council approve Amendment No. 1 to the original Agreement (C1995-093) between the Consolidated Fire Protection District of Los Angeles County (the County) and the City of Torrance for administration of the Unified Hazardous Waste and Materials Management Regulatory Program.

Funding

Not applicable.

BACKGROUND/ANALYSIS

Senate Bill 1082-passed in 1993 created Chapter 6.11 of the California Health and Safety Code setting up the requirements for the Certified Unified Program Agency (CUPA). The law was put in place to unify five hazardous materials programs: Hazardous Materials Disclosure Program; California Accidental Release Program (CalARP); Underground Storage Tank (UST) program; California Hazardous Waste Program; and Sections of the Uniform Fire Code.

The administration of these programs was placed with each county in the State as the CUPA. In some instances where a city had been implementing one or more of these programs that city could be allowed to continue to administer the program as a Participating Agency (PA) to the CUPA or in some instances the city could become a CUPA.

Torrance had been doing the Disclosure, CalARP and UST programs prior to the start of the CUPA program and applied to the County of Los Angeles CUPA (LACoCUPA) to continue doing these programs as a PA to the LACoCUPA, the Los Angeles County Fire Department, Health Hazardous Material Division. In 1996 the LACoCUPA and the Torrance Fire Department signed a Memorandum of Understanding delineating areas of responsibility for the hazardous materials programs Torrance had been implementing.

The MOU instituted a Single Fee System consistent with the requirements of SB 1082. In order to meet this provision Torrance was required to send the LACoCUPA the yearly billing data for all hazardous materials program businesses in our jurisdiction. The County would then send out the bills and collect all monies. The MOU required the LACoCUPA to forward all money collected for Torrance to the Torrance Fire Department within 45 days following the month the

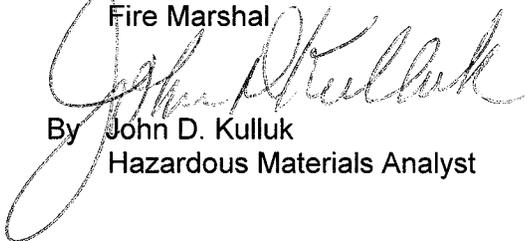
funds were collected and posted. Further, the LACoCUPA had responsibility for collecting any late payments. The policy of the LACoCUPA at the time of our original agreement was to add a 25% late payment penalty onto each facility that failed to pay their bill within the prescribed time. The penalty money is divided between the LACoCUPA and Torrance in proportion to the fees for Program Elements administered by each agency.

The LACoCUPA, with the approval of the Board of Supervisors, has increased the late payment penalty provisions from 25% to 40% beginning with FY05-06 to recover the additional costs of fee collection. The Participating Agency Agreement with the City of Torrance (Attachment B) specifies the original 25% penalty rate and will need to be amended with the revised penalty rate. The LACoCUPA is also requesting that the length of time that the county can hold fee payments be increased from 45 days to 60 days from the month the payment was made and posted.

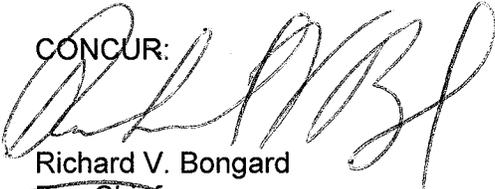
LACoCUPA requests that the Amendment to the Agreement (Attachment A) be submitted to the Torrance City Council for approval and signature and returned to Los Angeles County for signature by the Board of Supervisors. The amendment is to increase the late payment penalty from 25% to 40% of the permit fee and to increase the time the County may hold collected funds before forwarding them to the Torrance Fire Department from 45 days to 60 days from the month the funds were collected and posted.

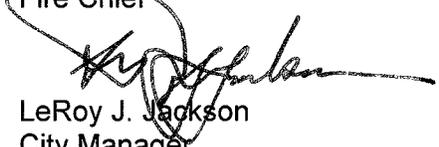
Respectfully submitted,

KEN CARTER
Fire Marshal

By  John D. Kulluk
Hazardous Materials Analyst

CONCUR:


Richard V. Bongard
Fire Chief


LeRoy J. Jackson
City Manager

Attachments:

A. Amendment No. 1 to the Agreement between the Consolidated Fire Protection District of Los Angeles County and the City of Torrance for administration of the Unified Hazardous Waste and Materials Management Regulatory Program

B. Agreement for administration of the Unified Hazardous Waste and Materials Management Regulatory Program by and between the Consolidated Fire Protection District of Los Angeles County and the City of Torrance.

1 **AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE CONSOLIDATED FIRE**
2 **PROTECTION DISTRICT OF LOS ANGELES COUNTY AND THE CITY OF**
3 **TORRANCE FOR ADMINISTRATION OF THE UNIFIED HAZARDOUS WASTE AND**
4 **MATERIALS MANAGEMENT REGULATORY PROGRAM**

5
6 This Amendment No. 1 to the December 17, 1996 Agreement for the
7 administration of the Unified Hazardous Waste and Materials Management Regulatory
8 Program (hereinafter "Amendment") by and between the Consolidated Fire Protection
9 District of Los Angeles County (hereinafter "County") and the City of Torrance
10 (hereinafter "City"), shall be effective upon the date it is fully executed by both parties
11 hereinbelow.
12

13 **WITNESSETH:**

14 **WHEREAS**, SB 1082, now codified into the California Health and Safety Code
15 (hereinafter "H&SC") at Division 20, Chapter 6.11, commencing with Section 25404,
16 was enacted to consolidate, coordinate and make consistent hazardous materials and
17 hazardous waste management programs; and

18 **WHEREAS**, H&SC, Division 20, Chapter 6.11, commencing with Section 25404,
19 required the Secretary of the California Environmental Protection Agency (hereinafter
20 "CalEPA") to develop and implement a unified hazardous waste and hazardous
21 materials management regulatory program (hereinafter "Unified Program"), including the
22 application review and certification of counties and cities, as Certified Unified Program
23 Agencies (hereinafter "CUPA") to implement the Unified Program; and
24
25

1 **WHEREAS**, the Los Angeles County Consolidated Fire Protection District has
2 been designated by the Board of Supervisors and certified by the CalEPA as the CUPA
3 for the County of Los Angeles (hereinafter "LACoCUPA"); and

4 **WHEREAS**, the LACoCUPA and the City have entered into an agreement to
5 administer the Unified Program; and

6 **WHEREAS**, the LACoCUPA provides annual consolidated permit fee billings for
7 all facilities falling under the Unified Program, including those program elements
8 administered by the City, under the provisions of the single fee system mandated by the
9 Unified Program; and

10 **WHEREAS**, the LACoCUPA has increased the late payment penalty provisions,
11 with the approval of the Board of Supervisors, beginning with Fiscal Year 2005-06, to
12 recover the additional costs of fee collection; and

13 **WHEREAS**, the LACoCUPA meets with the City each year to establish a
14 mutually agreeable date to accept billing information and generate annual permit fee
15 invoices for facilities falling under the program elements administered by the City.

16
17 **NOW THEREFORE THE PARTIES HERETO AGREE:**

18 1. To amend Section V, Single Fee System, by deleting the current language in its
19 entirety and inserting the following:

20 A. The LACoCUPA and City shall implement a Single Fee System in
21 accordance with H&SC Section 25404(d); Section 15210, Title 27, CCR and the
22 Implementation Plan.

23 B. The LACoCUPA shall administer the fee collection system in conjunction
24 with the City. The City shall notify the LACoCUPA of its program costs that have been
25 adopted by City resolution/ordinance by May 1st of each year, or by another date

1 mutually agreed upon by both parties, in accordance with Section VI below and the
2 guidelines established by the fee accountability program in the MOU referenced in
3 Section III above. The City shall provide to the LACoCUPA, a list of facilities and the
4 appropriate fees for each Program Element(s) being implemented by the City using
5 mutually agreeable electronic transfer protocols where appropriate. Upon request by
6 the LACoCUPA, the City shall make available for the LACoCUPA to review, all
7 applicable records regarding its fees, collections, transfers and retentions by the City.

8 C. The LACoCUPA shall bill each facility annually for each fiscal year. The
9 LACoCUPA shall include in the billing package a summary sheet itemizing costs
10 associated with each Program Element, including those costs for the City and the
11 annual State Surcharge Fee. Each facility shall pay the LACoCUPA all costs for
12 Program Elements delineated in the fee billing statement. Each facility shall pay the
13 LACoCUPA the full amount due within 30 calendar days from the date of the invoice. A
14 facility may elect to pay at least one half of the total amount due within 30 days of the
15 invoice date and the remaining balance in full no later than 60 days after the invoice
16 date. Upon receipt of full payment, a LACoCUPA consolidated permit shall be issued to
17 the facility by the LACoCUPA.

18 D. The LACoCUPA shall transmit all monies collected for the City no later
19 than the 60th day after the month the revenue is received and posted to the facility's
20 account. Each transmittal of monies to the City shall include an itemized listing of fees
21 paid and the corresponding business names and site addresses. Where feasible and
22 appropriate, the LACoCUPA shall transmit monies electronically to the City, using
23 mutually agreeable electronic transfer protocols for the wire transfer of funds.
24
25

1 E. For partial payments from facilities, the LA County Fire, Financial
2 Management Division (the "FMD") will apportion the payments to the LACoCUPA, the
3 City and the State based on the proportionate amount due to each agency.

4 F. Through a Notice of Enforcement ("NOE") issued to those facilities, the
5 LACoCUPA will impose a single 40% late payment penalty, effective beginning with the
6 Fiscal Year 2005-06, on each facility that fails to pay the appropriate fee within the
7 prescribed time. The LACoCUPA will communicate to the City a list of those facilities
8 that are issued a NOE. LACoCUPA will remit penalty amounts assessed and collected
9 on fees for Program Elements administered by the City to the City no later than the 60th
10 day after the month the revenue is received and posted to the facility's account by the
11 LACoCUPA. Each agency responsible for the specific Program Element will absorb the
12 costs associated with persons regulated under the Unified Program who do not pay the
13 required fees.

14 G. The LACoCUPA may take appropriate collection and/or legal action
15 available under State H&SC and/or under County Fee Ordinances against facilities that
16 have failed to pay the appropriate fees. Any costs incurred for such actions will be
17 shared based on the proportionate amount due each agency. If the City chooses to
18 pursue legal action against such facilities, judgments shall attempt to recover all fees
19 and penalties as authorized by law and not just City fees. The City shall notify the
20 LACoCUPA in writing in advance of all legal actions and obtain written Agreement from
21 the LACoCUPA on any decisions regarding settlements.

22 H. The LACoCUPA shall transmit to the Secretary all collected State
23 surcharge revenues within 30 days of the end of each State fiscal quarter.

24 I. The Board of Supervisors for the County of Los Angeles shall adopt the
25 City's fee schedules for Program Elements administered by the City and which have

1 been adopted through City resolution/ordinance within the restrictions of H&SC Chapter
2 6.11 and which includes the methodology that defines how the fees are calculated. The
3 Board's adoption will establish the City fee schedule within the LACoCUPA's Single Fee
4 System and will authorize the Los Angeles County Fire Chief (the "Fire Chief") to collect
5 fees for the LACoCUPA and to administratively accept the City's adjusted fee amounts
6 no more than once per year. The Fire Chief will only adjust the City's new fees if the
7 City Council has adopted the fees and if the fees comply with the LACoCUPA fee
8 accountability program in Section VI below.

9 J. The LACoCUPA will seek further approval from the Board of Supervisors
10 only if necessary for the LACoCUPA to adjust its portion of the fee or if the LACoCUPA
11 or City wishes to change their fee calculation methodology.

12 K. The City will be able to bill and collect all non-recurring fees for direct
13 deposit into its accounts. These may include such items as one time permit fees
14 associated with new businesses.

15 L. Businesses recognized as nonprofit corporations by the United States
16 Internal Revenue Service may be fee exempt.

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18 2. All other terms of the Agreement shall remain in full force and effect unless
19 terminated by either party pursuant to the terms of the Agreement.
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1 **IN WITNESS WHEREOF**, this Amendment has been exercised by each party on
2 the day and year written below, and is effective and operative upon the date that it is
3 fully exercised by both parties, whichever date of execution by either party is later.

4
5 **CONSOLIDATED FIRE PROTECTION
DISTRICT OF LOS ANGELES COUNTY**

CITY OF TORRANCE

6
7 By _____
8 Mayor, Board of Supervisors, acting
9 as the Board of Directors of the
Consolidated Fire Protection District
Of Los Angeles County

By _____
Mayor

10
11 _____
Date

12
13 **ATTEST**

ATTEST

14 Sachi Hamai
15 Executive Office – Clerk of the
Board of Supervisors

16
17 By _____
Deputy

By _____
City Clerk

18
19 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

20 RAYMOND G. FORTNER, JR.
21 County Counsel

22
23 By _____
Deputy

By _____
City Attorney

AGREEMENT BETWEEN THE COUNTY OF LOS ANGELES AND THE CITY OF TORRANCE FOR ADMINISTRATION OF THE UNIFIED HAZARDOUS WASTE AND MATERIALS MANAGEMENT REGULATORY PROGRAM

This Agreement is made and entered into this 17 day Dec., 1996, between the County of Los Angeles ("the County") and the CITY OF Torrance (the "City").

WITNESSETH:

WHEREAS, SB 1082, now codified into California Health and Safety Code, (the "H&SC") at Division 20, Chapter 6.11, commencing with Section 25404, was enacted to consolidate, coordinate and make consistent hazardous materials and hazardous waste management programs and regulates enforcement among local jurisdictions to facilitate economic growth and development and public safety; and

WHEREAS, H&SC, Division 20, Chapter 6.11, commencing with Section 25404, requires the Secretary (the "Secretary") of the California Environmental Protection Agency (the "Cal-EPA"), to develop and implement a unified hazardous waste and hazardous materials management regulatory program (the "Unified Program"); and

WHEREAS, the Certified Unified Program Agency, (the "CUPA"), shall merge the administration of the hazardous materials and hazardous waste management programs currently administered by state and local governments, (the "Program Elements"), and shall be responsible for applying statewide standards to each facility subject to the program within the CUPA's jurisdiction; and

WHEREAS, local governments may apply to the Secretary for designation as the CUPA within their respective jurisdictions; and

WHEREAS, the Los Angeles County Fire Department, consisting of the Consolidated Fire District and the Forester and Fire Warden for the County of Los Angeles, is the administrating agency for the Los Angeles County Certified Unified Program Agency (the "LACoCUPA"); and

WHEREAS, the County and the cities within the County have developed mutually supportive relationships as partners in implementing and conforming to H&SC hazardous materials and hazardous waste management statutory requirements; and

WHEREAS, counties are required to apply for designation as the CUPA within the unincorporated area of the county and within each city in the county that has not applied for designation as a CUPA; and

WHEREAS, the LACoCUPA, under authority of the Board of Supervisors for the County of Los Angeles, shall apply to the Secretary for the designation as the CUPA for the County of Los Angeles; and

Duplicate Original

695-095

WHEREAS, a local agency that chooses not to seek designation as a CUPA, but which desires to manage a Program Element (a "Participating Agency"), upon notice to its CUPA, may opt to implement and administer one or more of the Program Elements; and

WHEREAS, the City is not designated as a CUPA; and

WHEREAS, the Unified Program requires administrative procedures to implement requirements of the Unified Program including a consolidated permit program, coordinated enforcement of all program statutes, regulations and ordinances, development of a single fee system and development and coordination of an inspection and enforcement program; and

WHEREAS, the LACoCUPA is required to implement the Unified Program consistent with the "Implementation Plan" found in the LACoCUPA application for certification as a Unified Program Agency and approved by the Secretary; and

WHEREAS, H&SC Sections 25404.5(a) (2) & (3) allow for collection of fees as a funding source to recover expenses for implementing hazardous materials and hazardous waste Program Elements of the Unified Program and for those reasonable and necessary costs of administering the Unified Program; and

WHEREAS, the laws governing hazardous materials and hazardous waste management are dynamic and subject to intensive legislative scrutiny, modification and concern and agreements to conform to and implement H&SC requirements need to be flexible to comply with changing state and federal laws that may affect local agency performance; and

WHEREAS, the LACoCUPA and City recognize that implementation of new H&SC requirements requires timely conformance to maintain the public health and safety; and

WHEREAS, conformance to the H&SC requirements as referenced herein allow for the implementation of a Memorandum of Understanding, (an "MOU") by the LACoCUPA Fire Chief and the City Fire Department for the delegation of administrative authority to carry out the requirements of the H&SC and to conform to amendments to the H&SC by modifying an MOU as necessary.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and agreements set forth herein, the parties mutually agree as follows:

SECTION I IMPLEMENTATION DATE

This Agreement shall be effective upon certification of the LACoCUPA by the Secretary and implementation of the LACoCUPA, July 1, 1997.

SECTION II PROGRAM ELEMENTS

A. The following are the Program Elements that are governed by this Agreement and that are to be provided by either the LACoCUPA or by the City:

1. Hazardous Waste Generator Program in accordance with H&SC Division 20, Chapter 6.5, Section 25100 et seq. and in accordance with the requirements of the Implementation Plan. These requirements are applicable to hazardous waste generators, hazardous waste generators conducting treatment conditionally authorized pursuant to Section 25200.3, hazardous waste generators conducting treatment conditionally exempted pursuant to Section 25201.5 and facilities deemed to hold a permit-by-rule pursuant to the regulations adopted by the Department of Toxic Substances Control (DTSC) of Cal-EPA.
 2. Aboveground Storage Tank Program, Spill Prevention, Control and Countermeasures Plan in accordance with H&SC Division 20, Chapter 6.67 Section 25270.5 and in accordance with the Implementation Plan.
 3. Underground Storage Tank Program in accordance with H&SC Division 20, Chapter 6.7 excluding Section 25297.1 and the requirements of the Implementation Plan. The City of Torrance shall be the administering agency for implementation of the inspection program and tank opening and closure review. The LACoCUPA shall be responsible for annual billings and permit issuance at underground storage tank facilities.
 4. Hazardous Materials Release Response Plan and Inventory Program in accordance with H&SC Division 20 Chapter 6.95, Article 1 and the Implementation Plan.
 5. Risk Management and Prevention Program in accordance with H&SC Division 20 Chapter 6.95, Article 2 and in accordance with the Implementation Plan.
 6. Hazardous Materials Management Plan and Inventory Statement Program in accordance with H&SC Section 13143.9 and Section 80.103(c), Part 9 of Title 24 California Code of Regulations (i.e., Uniform Fire Code as amended and adopted by the party to this Agreement that provides the service) and in accordance with the Implementation Plan. Any agency that administers the Hazardous Materials Release Response Plan and Inventory Program under H&SC Chapter 6.95 is not required to also administer the Hazardous Materials Management Plan and Inventory Statement Program under the California Fire Code, as amended.
- B. Program Elements to be administered by the LACoCUPA include the Hazardous Waste Generator Program and Aboveground Storage Tank Program Spill Prevention, Control and Countermeasures Plan. Program Elements to be administered by the City are the Underground Storage Tank Program, Hazardous Materials Release Response Plan and Inventory Program/Hazardous Materials Management Plan and Hazardous Materials Inventory Statement Program, and Risk Management and Prevention Program.
- C. As part of the comprehensive services to be provided by the LACoCUPA under the Hazardous Waste Generator Program, the LACoCUPA shall continue to provide in the City, programs in site mitigation, criminal investigations and emergency response.

SECTION III MEMORANDUM OF UNDERSTANDING

- A. The LACoCUPA and the Fire Department for the City (the "City Fire Department") shall develop and implement a Memorandum of Understanding that shall delineate specific areas of responsibility as required by H&SC Chapter 6.11 and Title 27 Division 1, Subdivision 4, Chapter 1 of the California Code of Regulations, ("Title 27 CCR"). The LACoCUPA and City Fire Department shall review and update the MOU whenever necessary.
- B. During implementation and administration of each Program Element that the City agrees to implement as provided in the MOU, the City Fire Department shall remain in compliance with the requirements of H & SC Section 25404.3(b) which includes maintaining adequate technical expertise, staff resources, budget resources and funding mechanism to effectively and continuously comply with the requirements of such program(s). Throughout the term of this Agreement, the City Fire Department shall maintain full compliance with all relevant portions of Title 27 CCR that apply to PAs.
- C. Renegotiation of the terms of the MOU may commence upon thirty (30) days notice by either party to the other.
- D. The MOU may be amended by mutual agreement of the parties thereto as necessary and appropriate to effectuate changes in H&SC requirements, provided that the amendments are consistent with the original intent of this Agreement.

SECTION IV PARTICIPATING AGENCY MANAGEMENT

- A. The LACoCUPA, as part of the self audit in accordance with Section 15280(a)(1) of Title 27 CCR, shall perform an evaluation of the City's performance in the administration of the Program Elements implemented by the City. If during this performance evaluation, the LACoCUPA finds that the City has ceased to meet the minimum qualifications for program administration or has failed to implement its Program Elements(s) as described in the Unified Program application approved by the Secretary, the LACoCUPA shall give written notice of deficiencies to the City. The LACoCUPA shall give a maximum of 90 days for the City to correct deficiencies during which time the City shall continue to implement and administer the specified Program Elements described herein.
- B. If the City does not correct the noted deficiencies within the prescribed time period, the City and LACoCUPA shall enter into a Program Improvement Agreement ("PIA"). The PIA shall specify areas of improvement, minimum accomplishments necessary and time frames to be met to achieve full compliance with the requirements of the H&SC and Title 27, CCR.

The City may continue to implement the specified program(s) described herein while the program improvement agreement is in effect and the City is in compliance with the program improvement agreement.

- C. If the City fails to meet the requirements of any PIA executed between the LACoCUPA and City, the LACoCUPA, at its own sole discretion and in accordance with Title 27, CCR, Section 15300, may apply to the Secretary for authority to implement/administer the Program Elements which are the responsibility of the City.
- D. Thirty (30) days prior to applying to the Secretary to authorize LACoCUPA to implement and administer the program responsibilities of the City, the LACoCUPA shall submit to the City a notification of the LACoCUPA's intent to seek replacement of the City to perform functions described herein. The notification shall describe the reasons why the City has failed to meet its obligations to adequately implement the City programs and the evidence relied on in reaching those conclusions. The LACoCUPA shall give the City ten (10) working days to respond in writing to the notification.
- E. If the City chooses to withdraw from Participating Agency responsibilities, the City shall notify the LACoCUPA in writing 180 days prior to withdrawing from its obligations to manage specified Program Elements. The notice shall include the effective date of termination of obligations within the LACoCUPA and the reasons for such termination.

SECTION V SINGLE FEE SYSTEM

- A. The LACoCUPA and City shall implement a Single Fee System in accordance with H&SC Section 25404(d); Section 15210, Title 27, CCR and the Implementation Plan.
- B. The LACoCUPA shall administer the fee collection system in conjunction with the City. The City shall notify the LACoCUPA of its program costs that have been adopted by City resolution/ordinance by May 1st each year in accordance with Section VI below and guidelines established for the fee accountability program in the MOU referenced in Section III above. The City shall provide to the LACoCUPA, a list of the facilities and the appropriate fees for each Program Element(s) being implemented by the City using mutually agreeable electronic transfer protocols where appropriate. Upon request by the LACoCUPA, the City shall make available for the LACoCUPA to review, all applicable records regarding its fees, collections, transfers and retentions by the City.
- C. The LACoCUPA shall bill each facility annually by July 30th incorporating any fee adjustment from the City in accordance with Section V(B) above and the provisions of Section V(K) below. The LACoCUPA shall include with the bill, a summary sheet itemizing costs associated with each Program Element, including the annual State Surcharge Fee. Each facility shall pay the LACoCUPA all costs for Program Elements delineated in the fee billing statement. Each facility shall pay the LACoCUPA in full within 30 days of the invoice date. Upon receipt of full payment, a LACoCUPA consolidated permit shall be issued to the facility by the LACoCUPA. Fees for

businesses established after the beginning of the billing cycle (July of each year) shall be prorated on a quarterly basis.

D. The LACoCUPA shall transmit all monies collected for the City no later than 30 day after the end of the month in which monies were collected. Each transmittal of monies to the City shall include an itemized listing of fees paid and the corresponding businesses' names and site addresses. Where feasible and appropriate, the LACoCUPA shall transmit monies electronically to the City, using mutually agreeable electronic transfer protocols for the wire transfer of funds.

E. For partial payments from facilities, the LA County Fire, Financial Management Division (the "FMD") will apportion the payments to the LACoCUPA, the City and the State based on the proportionate amount due to each agency.

F. Through a Notice of Enforcement ("NOE") issued to those facilities which fail to pay the appropriate fees in full within 30 days, the LACoCUPA will impose a 25% late payment penalty assessment on the total fees including the state surcharge. The City's share of the penalty assessment shall be equal to 25% of the total fees for programs administered by the City. The LACoCUPA will communicate to the City a list of those facilities that are issued an NOE. The LACoCUPA will remit to the City the fees collected for the City including the City's share of the penalty assessment no later than 30 days after the close of the month in which the fees or penalty assessment are collected. The remainder of the collected penalty assessment shall be retained by the LACoCUPA to cover the administrative cost. In the event that fees are not collected, each agency responsible for the specific Program Element will absorb it's costs associated with those Program Elements for which it is responsible.

G. LACoCUPA will send a Notice of Lien Placement (NOLP) to each facility that has failed to make full payment within 60 days of the NOE. The lien will be placed on the facility 30 days after the NOLP following failure to pay the appropriate fee and penalty in full.

H. Within 15 days following lien placement or 90 days following the NOE (in case a lien has not been filed by the County), the LACoCUPA will turn over collection of the unpaid fees to the City and provide a statement of delinquent accounts to the City, unless the City has notified LACoCUPA that it does not desire to participate in collection duties. All fees collected by the City shall be submitted to the LACoCUPA FMD for processing and redistribution of fees to the appropriate agencies. If the City is successful in collecting fees and penalties, the City will receive 100% of city fees and penalties and 35% of the County's fees and penalties. The LACoCUPA shall receive the remaining 65% of the LACoCUPA's fees and penalties and the State surcharge. Each transmittal of monies to the LACoCUPA shall include an itemized listing of fees paid and the corresponding businesses' name and site addresses. The LACoCUPA will release the lien expeditiously, once the fees have been paid.

- I. LACoCUPA may take appropriate legal action pursuant to County Fee Ordinances (beginning with Chapters 2.20 and 12.52) against facilities that have failed to pay the appropriate fees. If the City chooses to pursue legal action against such facilities, judgements shall attempt to recover all fees and penalties as authorized by law and not just city fees. The City shall inform the LACoCUPA of all legal actions and obtain agreement from the LACoCUPA on decisions regarding settlements.
- J. The LACoCUPA shall transmit to the Secretary all collected state surcharge revenues within 30 days of the end of each State fiscal quarter (October 1 - September 30th).
- K. The Board of Supervisors for the County of Los Angeles shall adopt the City's fee schedules, which have been adopted through City resolution/ordinance within the restrictions of H&SC Chapter 6.11 by May 30th where applicable, which includes the methodology that defines how fees are calculated. The Board's adoption will establish the City fee schedule within the LACoCUPA's Single Fee System and will authorize the Los Angeles County Fire Chief, (the "Fire Chief") to collect fees for the LACoCUPA and to administratively accept the City's adjusted fee amounts no more than once per year. The Fire Chief will only adjust the City's new fees if the City Council has adopted the fees and if the fees comply with the LACoCUPA fee accountability program in Section VI below.
- L. The LACoCUPA will seek further approval from the Board of Supervisors only if necessary for the LACoCUPA to adjust its portion of the fee or if the LACoCUPA or City wishes to change their fee calculation methodology.
- M. The City will be able to bill and collect all non-recurring fees for direct deposit into its accounts. These may include such items as one time permit fees associated with new businesses.
- N. When either the LACoCUPA or the City conducts a "combined inspection" for the other agency, a flat hourly rate will be charged and billed directly to the responsible agency for the Program Element mandating the inspection. This hourly rate shall be discussed and agreed upon by both parties. Combined inspections are those where an inspector from either responsible agency is designated through agreement to inspect a facility for both responsible agency Program Elements.
- O. Businesses recognized as nonprofit corporations by the United States Internal Revenue Service, government agency facilities and special district facilities may be fee exempt unless otherwise noted in the aforementioned MOU.

SECTION VI FEE ACCOUNTABILITY PROGRAM

- A. The LACoCUPA shall establish a fee accountability program pursuant to H&SC §25404.5(c) and §15210(b), Title 27, CCR and the Implementation Plan to encourage efficient and cost effective operation of the program for which fees are assessed. The City shall provide the LACoCUPA with

a fee accountability program for specified program responsibilities that shall include at a minimum the following elements:

1. an accounting procedure for the fee schedule,
2. discrete billable services categorized as either site-specific or general,
3. staff work hours required to implement the program,
4. direct program expenses including durable and disposable equipment,
5. indirect program expenses including overhead for facilities and administrative functions,
6. the number of regulated businesses in each Program Element within the jurisdiction,
7. total number of regulated businesses in the jurisdiction, and
8. quantity and range of services provided including frequency of inspections.

B. The LACoCUPA and the City shall review and update the fee accountability program annually.

SECTION VII FEE DISPUTE RESOLUTION

A. Should a Unified Program Facility, (the "facility"), dispute the amount or applicability of a fee or penalty charged for one or more Program Elements, the facility shall:

1. First pay the assessed fee before the fee becomes delinquent to avoid additional penalties.
2. If applicable, request, within 60 days of the date of the first invoice requesting payment, an inspection by a representative of the responsible agency to verify conditions or status of the facility. The agency responsible for the Program Element under question will inspect the facility within a reasonable time, and attempt to inspect within 15 working days from the date the request is received. If the inspector determines the status of the facility should be changed in a manner that will change the fee status of the facility, appropriate paperwork developed by LACoCUPA will be submitted to the FMD of the Los Angeles County Fire Department. If a refund or adjustment is due, a refund check shall be forwarded to the facility within 60 days of the inspection by the LACoCUPA FMD. If the refund involves City Program Element(s), and the City has received its fee portion for the Program Element(s), the City shall reimburse the LACoCUPA the City's share of the amount refunded within 30 days of the date of notification by the LACoCUPA for reimbursement to the facility.
3. Submit to the LACoCUPA within 60 days of the date of the first invoice requesting payment, a written application for refund or adjustment to the fee. This application may include documentation justifying the claim for refund or adjustment. The LACoCUPA Coordinator as defined in the MOU, shall forward the application to the City Coordinator, as defined in the MOU, if the application involves a Program Element that the City administers. The application shall be

reviewed by the LACoCUPA Coordinator unless the application was forwarded to the City Coordinator, in which event the application shall be reviewed by both coordinators, and a response, mutually agreed upon by the coordinators, shall be given to the facility by the LACoCUPA Coordinator within 60 days of the receipt of the application.

a) If a refund or adjustment is due, a full refund check shall be forwarded to the facility by the LACoCUPA FMD within 60 days of the response to the facility. If the refund or adjustment involves fees charged for one or more of the City's Program Element and the City has received the fee, the City shall reimburse the LACoCUPA within 30 days of the date of notification by the LACoCUPA for reimbursement to the facility.

b) If the application is denied, the facility may within 60 days of the denial, apply to the LACoCUPA Coordinator in writing for an appeal hearing. The LACoCUPA Coordinator shall set a date for an appeal hearing not later than 90 days after the date of the application. Notice of the time and place of the hearing shall be mailed to the facility not later than 15 days before the date set for the hearing. The LACoCUPA Coordinator may request the facility produce specific records at such hearings and the notice may designate records required to be produced.

B. The appeal hearing board shall be chaired by the Division Chief of the Health Hazardous Materials Division of the LACoCUPA or his/her designee. The appeal hearing board shall be composed of the LACoCUPA Coordinator, the Deputy Chief of the Prevention Bureau or his duly authorized representative, a representative of the LACoCUPA FMD, the City Coordinator and two other City representatives agreed to by the appeal hearing board chair. The hearing shall be informal and shall not be governed by the rules of evidence applicable to courts of law. The facility shall have the right to present relevant evidence at the hearing. LACoCUPA and/or City staff may, but need not, present relevant evidence. Before the conclusion of the hearing, the appeal hearing board chair may, but need not, permit other persons to present relevant evidence. The appeal hearing board chair may continue the hearing to allow the presentation of additional evidence.

C. At the conclusion of the hearing, or within a reasonable time thereafter, the appeal hearing board shall determine, based upon the evidence presented at the hearing, whether to deny or grant the application for refund or adjustment to the amount of refund owed to the facility. Written notice of the decision of the appeal hearing board shall be given to the facility within 30 days of the conclusion of the hearing. If a refund or adjustment is due, a full refund check shall be forwarded to the facility by the LACoCUPA FMD within 60 days of the written notice of decision to the facility. If the refund or adjustment involves fees charged for one or more of the City's Program Elements and the City has received the fee, the City shall reimburse the LACoCUPA within 30 days of the date of notification by the LACoCUPA for reimbursement to the facility.

D. The decision of the appeal hearing board shall be final and conclusive.

E. If the application involves an issue related to the State surcharge, the LACoCUPA will attempt to resolve the matter as described above. Any dispute involving State Surcharges that cannot be resolved using the process described above, shall be referred to the Secretary within 60 days of the receipt of the application.

F. If the application involves an issue related to a penalty, the LACoCUPA will attempt to resolve the matter as described above.

SECTION VIII INDEMNIFICATION

Neither the City nor the County of Los Angeles shall be liable for the negligent or wrongful acts of the other in the performance of this Agreement. The City agrees to protect, indemnify, defend and hold harmless the County of Los Angeles, its agents, officers, contractors, employees and volunteers from any and all claims, demands, liabilities and expenses, including reasonable attorneys' fees arising from the negligent or wrongful acts of the County in the performance of this Agreement. The County of Los Angeles agrees to protect, indemnify, defend and hold harmless the City, its agents, officers, contractors, employees and volunteers from any and all claims, demands, liabilities and expenses, including reasonable attorneys' fees arising from the negligent or wrongful acts of the City in the performance of this Agreement.

SECTION IX TERMINATION

Upon the date of withdrawal or revocation of the City as a participating agency in any of the Program Elements contained herewith in accordance with the Unified Program method for withdrawal, this Agreement shall be terminated. All parties shall act in good faith to carry out the purposes and responsibilities put forth in this Agreement.

IN WITNESS WHEREOF, the City of Torrance has caused this Agreement to be executed by its Mayor or other duly appointed officer; and the Board of Supervisors of the County of Los Angeles has caused this Agreement to be executed by its Chair and attested by its Clerk, on the day, month and year noted herein below.

CITY OF Torrance

Dee Hardison
Dee Hardison, Mayor

11-26-96
Date

ATTEST
SUE HERBERS
CITY CLERK

[Signature]

APPROVED AS TO FORM
JOHN L. FELLOWS III
CITY ATTORNEY

by [Signature]
William G. Quale
Assistant City Attorney

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

18

DEC 17 1996

Joanne Sturges
JOANNE STURGES
EXECUTIVE OFFICER

COUNTY OF LOS ANGELES

[Signature]
Chair, Board of Supervisors

DEC 17 1996
Date

ATTEST:

JOANNE STURGES, Executive
Officer Clerk of the Board of Supervisors

By [Signature]
Deputy

(SEAL)

APPROVED AS TO FORM

DEWITT W. CLINTON
County Counsel

By [Signature]
Deputy



