

FORM APPROVED COUNTY COUNSEL
BY: JIMMY R. YANG 6/15/11
DATE

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

159



FROM: Community Health Agency/Department of Environmental Health

SUBMITTAL DATE:
June 15, 2011

SUBJECT: Participating Agency Agreement with the City of Banning

RECOMMENDED MOTION:

- 1) Approve the attached Agreement with the City of Banning enabling the City to function as a Participating Agency within the County Certified Unified Program Agency; and
- 2) Authorize the Director of Environmental Health to execute said Agreement with the City of Banning.

BACKGROUND: The Community Health Agency, Department of Environmental Health was designated by the State of California, Environmental Protection Agency as the Certified Unified Program Agency (CUPA) or lead agency for the County in 1997.

(continued)

Steve Van Stockum

SVS:JSW

Steve Van Stockum, Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	11/12

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Michael R. Shetter*
Michael R. Shetter

County Executive Office Signature

FOR Debbie Cournoyer

Consent
 Policy

Consent
 Policy

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 09/29/2009 District: All Agenda Number: 3.22

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.25

The State's goal in creating the CUPA was to make hazardous materials and hazardous waste management programs with cities and counties more coordinated, consolidated and consistent.

The County, as the CUPA, is responsible for coordinating and implementing hazardous material/waste management programs countywide in order to accomplish this goal. The County, as the lead agency, carries out all required elements throughout the County with the exception of the cities of Banning, Corona, and Riverside. These cities have opted to carry out various program elements within their jurisdiction through our existing Participating Agency (PA) Agreements.

The City of Banning has been an active PA since January 1997 and has worked cooperatively with us to ensure that the State's Unified Program elements are coordinated and uniformly carried out. This three year agreement is a renewal of the existing contract authorized and required by the California Health and Safety Code, Section 25404.1 (b) (1).

Under terms of this agreement the County, acting as the CUPA, agrees to administer the Underground Storage Tank Program, Hazardous Waste Generator Program, Above Ground Petroleum Storage Program and the Risk Management Program within the City of Banning. The City of Banning, acting as the PA, agrees to administer the Hazardous Materials Release Response Plans and Inventory Program and the Hazardous Materials Management Plans Program.

FISCAL

The approval of this item will result in no cost to the County.

AGREEMENT CERTIFIED UNIFIED PROGRAM

This Agreement is made and entered into by and between the City of Banning, hereinafter called "CITY," and the County of Riverside, through its Community Health Agency, Department of Environmental Health, Hazardous Materials Management Division, hereinafter called "COUNTY," and hereby establishes the responsibilities of each party concerning the Certified Unified Program Agency.

RECITALS

WHEREAS, Health & Safety Code §25404.1(b)(1) requires the County to act as a Certified Unified Program Agency (CUPA) to implement and operate a Unified Program in the unincorporated area of the county and within all incorporated cities that have not been certified as a CUPA, and;

WHEREAS, the certification of the County as a CUPA under Health & Safety Code §25400 et seq., enables the County to carry out the responsibilities of administering such regulatory programs, and;

WHEREAS, the City of Banning and the County of Riverside recognize that it is in the public interest to establish and implement a cooperative program for the management of hazardous materials within the City of Banning,

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, the Parties hereto mutually agree as provided on pages 1 through 7, and Attachment 1 attached hereto incorporated herein.

CITY

COUNTY

BY _____

BY _____

TITLE _____

TITLE _____

DATE _____

DATE _____

ADDRESS _____

ATTEST BY _____

TITLE _____

FORM APPROVED COUNTY COUNSEL
BY: JIMMY R. YANG 6/15/11
DATE

AGREEMENT

The COUNTY, acting as the CUPA, agrees to administer the Unified Program elements relating to the following facilities and operations within the jurisdiction of the CITY:

- 1.1 Underground Storage Tank Program
- 1.2 Hazardous Waste Generator Program, including hazardous waste generators conducting onsite treatment under permit-by-rule, conditional authorization and conditionally exempt authorizations.
- 1.3 Aboveground Petroleum Storage Act Program
- 1.4 Risk Management Program

The CITY acting as a Participating Agency (PA), within the Unified Program, shall administer the program elements relative to the following facilities and operations within the incorporated area of the CITY:

- 2.1 Hazardous Materials Release Response Plans and Inventory Program
- 2.2 Hazardous Materials Management Plans and Inventory and permits for the handling, use and storage of hazardous materials, pursuant to the Uniform Fire Code

COUNTY agrees to:

- 3.1 Maintain State Certification under H&SC §25404 et seq.
- 3.2 The COUNTY shall represent the agencies within the Unified Program at meeting and public hearing involved in the application and certification process.
- 3.3 Maintain documentation that the COUNTY meets the education, training, and experience pursuant to Title 27 of the California Code of Regulations (CCR) Sections 15260 and 15270, and has adequate resources to implement the program elements it administers pursuant to 27 CCR §15170, specified in certification requirements.
- 3.4 Conduct at a minimum, quarterly meetings of agencies within the Unified Program pursuant to the 27 CCR §15180, for the purpose of establishing policies and procedures, resolving duplication and regulatory overlap issues, encouraging uniformity and communicating enforcement

actions. The COUNTY and the CITY as a Participating Agency will have equal input into the decision-making process. Disputes will be resolved through the established Dispute Resolution Process.

- 3.5 Abide by the CUPA/PA Dispute Resolution Process, pursuant to CCR §15180 and §15210, as developed by agencies within the Unified Program and established in the application package submitted to the State for certification.
- 3.6 Collect and maintain the necessary data to implement and manage the Unified Program, pursuant to 27 CCR §15180 et. seq., including fee information, facility inventories, inspection and enforcement data, and permit information, facility inventories, inspection and enforcement data, and permit information. The data and information required by Cal-EPA must be submitted on a timely basis and according to established time lines.
- 3.7 Implement the Single Fee Billing System, pursuant to 27 CCR §15210, which incorporates fees and surcharges necessary to cover the costs incurred in implementing the Unified Program. Fees for CITY administered program elements will be collected by the COUNTY and dispersed to the CITY within 45 days or as mandated by statute and regulations.
- 3.8 Implement a fee accountability program, pursuant to 27 CCR §15220, to encourage efficient and cost effective operation of the Unified Program.
- 3.9 Collect the State Surcharge, pursuant to 27 CCR §15250, from regulated facilities and submit collected surcharges to Cal-EPA as mandated by the statute and regulations.
- 3.10 Implement the Inspection and Enforcement Plan, pursuant to 27 CCR §15200, in cooperation with the CITY in a manner consistent with the statute and certification.
- 3.11 Implement the Consolidated Permit Program, pursuant to 27 CCR §15190 and consistent with certification.

- 3.12 Conduct an annual audit of the CITY program elements pursuant to 27 CCR §15180 and §15290, or as necessary to maintain the Unified Program standards, as mandated by the statute and certification. Guidelines for content and conduct of the audits shall be developed in cooperation with the agencies within the Unified Program.
- 3.13 Enter into a Program Improvement agreement, pursuant to 27 CCR §15330(b), with the CITY, if the CITY ceases to meet minimum qualifications or fails to implement its program element(s) agreed upon by the agencies within the Unified Program and established certification. The Program Improvement Agreement shall specify the areas of improvement minimum accomplishments necessary, and time frames, which shall be met by the CITY.
- 3.14 Comply with all statutory and regulatory requirements.
- 3.15 The COUNTY shall indemnify and hold CITY, its officers, agents, departments, and employees free and harmless from any claim or liability whatsoever, based or asserted upon any act or omission of COUNTY, its officers, agents, departments, and employees for property damage, bodily injury or death or any other element of damage of any kind or nature, occurring in the performance of this Agreement between the parties to the extent that such liability is imposed on the CITY by the provisions of Section 895.2 of the Government Code of the State of California, and COUNTY shall defend, at its own expense, including attorney's fee, CITY, its officers, agents, departments and employees in any legal action or claim of any kind based upon such alleged acts or omissions.
- 3.16 The COUNTY agrees this agreement shall be effective as of July 1, 2011 and continue in effect through June 30, 2013, unless terminated by either party within six (6) months.

The CITY agrees to:

- 4.1 Provide Documentation/Certification that the CITY meets the education, training, and experience requirements identified in 27 CCR §15260 and §15270, and has adequate resources to implement the program element(s) it administers pursuant to 27 CCR §15170 specified in certification requirements.
- 4.2 Attend and participate in all scheduled meetings, pursuant to 27 CCR §15180, with agencies within the Unified Program.
- 4.3 Abide by the procedures established in the Dispute Resolution Process, pursuant to 27 CCR §15180 and certification requirements.
- 4.4 Provide, the COUNTY with data needed to manage the Unified Program, pursuant to 27 CCR §15180 et. seq., including fee information, facility inventories, inspection and enforcement data, and permit information. The data and information must be submitted in a timely manner and according to a frequency agreed upon by the agencies within the Unified Program, allowing the COUNTY to meet established time lines.
- 4.5 Cooperate with the COUNTY in the development of a Single Fee System and comply with all provisions established in the Single Fee System Implementation Plan, as developed by the agencies within the Unified Program and as specified within certification.
- 4.6 Adopt fees for program elements the CITY administers that are in compliance with all requirements pertaining to fee accountability program.
- 4.7 Implement the Inspection and Enforcement Plan, pursuant to 27 CCR §15200, in cooperation with agencies within the Unified Program and, in a manner consistent with the statute and certification.
- 4.8 Implement the Consolidated Permit Program Plan, pursuant to 27 CCR §15190, in cooperation with agencies within the Unified Program and in a manner consistent with certification.
- 4.9 Assist the COUNTY with the annual audit of the CITY program elements, pursuant to 27 CCR §15180 and §15290. Guidelines for the content and conduct of the audit and program improvement agreements shall be

developed by the agencies with the Unified Program.

- 4.10 Comply with all statutory and regulatory requirements.
- 4.11 To cover the COUNTY'S cost of administering the Certified Unified Program Agency the CITY agrees that the COUNTY will be paid in the following manner:
- a) The cost of the COUNTY to administer the Unified Program will be paid for by the businesses regulated under the program elements within the Unified Program.
 - b) The CITY will work cooperatively with the COUNTY in the development of any fees for recovering administrative costs. A public hearing will be held by the Board of Supervisors following public notice duly given, as required by law and following reasonable prior written notice to the CITY.
- 4.12 The CITY shall indemnify and hold COUNTY, its officers, agents, departments, and employees free and harmless from any claim or liability whatsoever, based or asserted upon any act or omission of CITY, its officers, agents, departments, and employees for property damage, bodily injury or death or any other element of damage of any kind or nature occurring in the performance of the Agreement between the parties to the extent that such liability is imposed on the COUNTY by the provisions of Section 895.2 of the Government Code of the State of California, and CITY shall defend at its expense, including attorney's fees, COUNTY, its officers, agents, departments, and employees in any legal action or claim of any kind based upon such alleged acts or omissions.

5.1 Either party may terminate this agreement by giving the other party six (6) months written notice at the following address:

<u>CITY</u>	<u>COUNTY</u>
City of Banning	County of Riverside
Fire Department	Community Health Agency
99 East Ramsey Street	Department of Environmental Health
Banning, CA 92220	4065 County Circle Drive, #104
	Riverside, CA 92503
	P.O. Box 7600
	Riverside, CA 92513-7600

5.2 No Third Party Beneficiary. This agreement between CITY and COUNTY is intended for the mutual benefit of the two signing parties only and to comply with the requirements of H&SC §25404.1(b)(1). No rights are created under this agreement in favor of any third party or any party who is not a direct signatory to this agreement.

5.3 This agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This written agreement may be changed or modified only upon the written consent of the parties hereto.

////
///
//
/

ATTACHMENT 1

The State of California Health and Safety Code, §25404 et seq., requires the County to apply for Certification to establish a Unified Program to consolidate the implementation of the following hazardous materials program requirements:

1. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.5, §25100 et seq., applicable to hazardous waste generators and hazardous waste generators conducting on-site treatment of hazardous wastes authorized under permit-by-rule, conditional authorization pursuant to H&SC §25200.3 and conditional exemption pursuant to H&SC §25201.5, (generally supplemented by Division 4.5, Title 22 of the California Code of Regulations).
2. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.67, §25270.5 (c), applicable to, the Aboveground Petroleum Storage Act Program requirements.
3. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.67, §25280 et seq., applicable to an Underground Storage Tank Program.
4. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.95, Article 1, §25501 et seq., (generally supplemented by Title 19 of the California Code of Regulations, Sections 2620-2734).
5. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.95, Article 2, §25531 et seq., (generally supplemented by Title 19 of the California Code of Regulations, Sections 2735.1-2785.1), applicable to Cal ARP.
6. Requirements adopted pursuant to Section 8001.3.2 and 8001.3.3, Part 9 of Title 24, California Fire Code, applicable to Hazardous Material Management Plans and Hazardous Materials Inventory Statements.