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1 WHEREAS, the FOG Control Programs of most Co-Permittees closely follow the FOG Control
2 Program adopted by DISTRICT pursuant to DISTRICT's model FOG Control Ordinance;

3
4 WHEREAS, COUNTY serves as the Health Officer of the Cities within COUNTY, and contracts to
5 provide Environmental Health Services to the Cities, including inspections of food service
6 establishments;

7
8 WHEREAS, DISTRICT is the local sewer agency for County of Orange Unincorporated Area 7
9 north of the City of Tustin and the DISTRICT owned and operated parts of City of Tustin, and other
10 areas where parcels may be directly connected to the DISTRICT's regional collection system, and
11 wishes to contract with COUNTY for the provision of food service establishment inspection services
12 described herein;

13
14 WHEREAS, DISTRICT is coordinating the extension of such Kitchen Best Management Practices
15 (BMPs) screening inspection services to food service establishments within the jurisdiction of Co-
16 Permittees who wish to participate in a jointly coordinated effort to implement the RB8 Order and
17 monitor and control SSOs; and

18
19 WHEREAS, COUNTY is agreeable to the rendering of such services on the terms and conditions
20 hereinafter set forth with DISTRICT acting as the lead contracting agency for the participating Co-
21 Permittees:

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23 NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

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1 **I. ALTERATION OF TERMS**

2 This Agreement, together with Exhibit A attached hereto and incorporated herein by reference fully
3 expresses all understanding of COUNTY and DISTRICT with respect to the subject matter of this
4 Agreement, and shall constitute the total Agreement between the parties for these purposes. No
5 addition to, or alteration of, the terms of this Agreement, whether written or verbal, shall be valid
6 unless made in writing and formally approved and executed by the parties.
7

8 **II. INDEMNIFICATION**

9 **A. MUTUAL INDEMNIFICATION**

10 1. Each party agrees to indemnify and hold harmless the other party, its officers, agents, and
11 employees from all liability, claims, losses, and demands, including defense costs, whether resulting
12 from court action or otherwise, arising out of the acts or omissions of the indemnifying party, its
13 officers, agents, or employees, or the condition of property used in the performance of this Agreement.

14 2. Each party agrees to provide the indemnifying party with written notification of any claim
15 within thirty (30) days of notice thereof, to allow the indemnifying party control over the defense and
16 settlement of the claim, and to cooperate with the indemnifying party in its defense.

17 **B. THIRD-PARTY INDEMNIFICATION**

18 1. Prior to COUNTY extending the services hereunder within the jurisdiction of any Co-
19 Permittee, DISTRICT in its coordination function shall first secure an indemnification agreement
20 identical in the scope and form provided for herein from each such Co-Permittee indemnifying
21 COUNTY from all liability, claims, losses, and demands, including defense costs, arising out of each
22 such Co-Permittee's acts or omissions in the performance of services provided for in this Agreement.
23

24 **III. NOTICES**

25 A. Unless otherwise specified, all notices, claims, correspondence, and/or reports authorized or
26 required by this Agreement shall be effective when:

27 1. Written and deposited in the United States mail, first class postage prepaid and addressed as
28 follows:

29 DISTRICT: General Manager
30 Orange County Sanitation District
31 P.O. Box 8127
32 Fountain Valley, CA 92728-8127
33

34 COUNTY: Director Health Care Agency
35 County of Orange Health Care Agency
36 405 W. 5th Street, 7th Floor
37 Santa Ana, CA 92701

1 2. Accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or
2 other expedited delivery service; or

3 3. Faxed, transmission confirmed.

4 B. Termination Notices shall be effective when written and deposited in the United States mail,
5 certified, return receipt requested; when faxed, transmission confirmed; or when accepted by U.S. Postal
6 Service Express Mail, Federal Express, United Parcel Service, or other expedited delivery service and
7 addressed as specified in subparagraph A. above.

8 C. For the purposes of this Agreement, any notice to be provided by COUNTY may be given by
9 Health Care Agency Director or his/her authorized representative.

10
11 **IV. PAYMENTS**

12 A. In consideration of the services provided hereunder, including services which may be extended
13 to participating Co-Permittees, DISTRICT agrees to pay COUNTY the fees or rates adopted by the
14 Orange County Board of Supervisors in effect at the time that such services were rendered. It is
15 understood by the parties that such fees and rates are only for the purpose of meeting COUNTY'S cost
16 associated with providing the services.

17 1. COUNTY shall invoice DISTRICT for such services quarterly and payment to COUNTY
18 should be released by DISTRICT no later than thirty (30) days after receipt of the invoice, unless
19 DISTRICT requests clarification or correction of the invoice within the same period. Failure of
20 DISTRICT to reimburse COUNTY may be considered a breach of the terms of this Agreement and may
21 result in termination of this Agreement.

22 2. COUNTY shall give DISTRICT a minimum of thirty (30) days notice of any change in fees
23 or rates adopted by the Orange County Board of Supervisors.

24 B. All fees or rates collected by COUNTY from DISTRICT shall be paid to and deposited in the
25 County Treasury and become property of COUNTY.

26
27 **V. SERVICES**

28 A. DISTRICT shall designate the Health Care Agency Director or his/her designee as an Inspector
29 under DISTRICT's FOG Control Program applicable to food service establishments. DISTRICT
30 agrees that the Health Care Agency Director or his/her designee, shall have all the powers and authority
31 associated with the position of Inspector within DISTRICT and shall, at no cost to COUNTY, have
32 access to any and all information and records as well as assistance from officers and employees of
33 DISTRICT necessary to perform services to be provided pursuant to this Agreement. Where the
34 services hereunder are to be extended to any participating Co-Permittee, DISTRICT shall in its
35 coordination function secure a similar designation and delegation of authority to the Health Care
36 Agency Director or his/her designee, by the participating Co-Permittee.

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1 Furthermore, DISTRICT shall ensure that the participating Co-Permittees' FOG Control Programs are
2 substantially similar to DISTRICT's FOG Control Program to ensure uniformity among participating
3 agencies.

4 B. The Health Care Agency Director or his/her designee shall perform all environmental health
5 services as described in Exhibit A related to the implementation of DISTRICT's and participating Co-
6 Permittees' FOG Control Programs applicable to food service establishments. DISTRICT and
7 COUNTY may amend this Agreement, in writing, to reflect any additions or deletions of DISTRICT
8 ordinances to be implemented by the Health Care Agency Director or his/her designee. In the event of
9 such additions or deletions, DISTRICT shall in its coordination function ensure that each participating
10 Co-Permittee adopt similar additions or deletions to ensure uniformity among participating agencies.

11 1. It is agreed that nothing in this Agreement shall be construed as binding DISTRICT to
12 demand of COUNTY, or as requiring COUNTY to perform any particular number of inspections or
13 visits except for the annual inspection identified in Exhibit A. Services under this Agreement may be
14 denied to DISTRICT if the Health Care Agency Director or his/her designee determines that
15 appropriate personnel or other resources are unavailable or the Health Care Agency Director or his/her
16 designee does not have legal capacity to act or perform a particular function or functions.

17 2. COUNTY shall furnish all necessary labor, supervision, equipment, communication services,
18 facilities, and supplies necessary to perform the scope of work and level of services to be provided.

19 3. The Health Care Agency Director or his/her designee shall not perform any code
20 enforcement functions and shall not enforce any building code, electrical code, or plumbing code and
21 shall not enforce any vector control functions assumed by the Orange County Vector Control District for
22 which these functions are provided pursuant to an agreement with COUNTY dated December 17, 1974.
23

24 **VI. SEVERABILITY**

25 If a court of competent jurisdiction declares any provision of this Agreement or application thereof
26 to any person or circumstances to be invalid or if any provision of this Agreement contravenes any
27 Federal, State, or County statute, ordinance, or regulation, the remaining provisions of this Agreement
28 or the application thereof shall remain valid, in full force and effect, and to that extent the provisions of
29 this Agreement are severable.
30

31 **VII. STATUS OF COUNTY**

32 COUNTY shall be wholly responsible for the manner in which it performs the services required of
33 it by the terms of this Agreement. COUNTY is entirely responsible for compensating staff and
34 consultants employed by COUNTY. This Agreement shall not be construed as creating the relationship
35 of employer and employee, or principal and agent, between COUNTY and DISTRICT or any of
36 COUNTY's employees, agents, or subcontractors. COUNTY assumes exclusively the responsibility for
37 the acts of its employees, agents, or subcontractors as they relate to the services to be provided during

1 the course and scope of their employment. COUNTY, its employees, agents, or subcontractors shall not
2 be entitled to any rights or privileges of DISTRICT employees and shall not be considered in any
3 manner to be DISTRICT employees. Where the services hereunder are to be extended to any
4 participating Co-Permittee, DISTRICT shall in its coordination function secure a similar stipulation by
5 the participating Co-Permittee.

6
7 **VIII. TERM**

8 A. The term of this Agreement shall commence on January 10, 2006, and shall remain in effect until
9 such time as it is terminated in accordance with the Termination Paragraph of this Agreement; provided,
10 however, the parties shall be obligated to perform such duties as would normally extend beyond this
11 term including, but not limited to, obligations with respect to confidentiality, indemnification, audits,
12 reporting, and accounting.

13 B. In the event of termination of this Agreement, the Health Care Agency Director or his/her
14 designee shall have no obligation to implement environmental health services as described in Exhibit A
15 of DISTRICT or of any participating Co-Permittee. Where the services hereunder are to be extended to
16 any participating Co-Permittee, DISTRICT shall in its coordination function secure a similar stipulation
17 by the participating Co-Permittee.

18
19 **IX. TERMINATION**

20 A. TERMINATION WITHOUT CAUSE

21 1. Either party may terminate this Agreement, without cause, upon no less than one hundred
22 eighty (180) days written notice given the other party.

23 B. TERMINATION FOR CAUSE

24 1. Either party may terminate this Agreement upon five (5) days written notice given the other,
25 if either party fails to perform any of the terms of this Agreement, provided the allegedly breaching
26 party has been given written notice of the alleged breach and has failed to cure the alleged breach within
27 thirty (30) days.

28 C. CONTINGENT FUNDING

29 1. Any obligation of COUNTY under this Agreement is contingent upon the following:

30 a) The continued availability of Federal, State, or COUNTY funds for reimbursement of
31 COUNTY's expenditures, and

32 b) Inclusion of sufficient funding for the services hereunder in the applicable budget
33 approved by the Board of Supervisors.

34 2. In the event such funding is subsequently reduced or terminated, COUNTY may terminate
35 this Agreement, or reduce or eliminate services, upon thirty (30) days written notice given DISTRICT.

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1 D. NON-EXCLUSIVE RIGHTS The rights and remedies of either party provided in this
2 Termination paragraph shall not be exclusive and are in addition to any other rights and remedies
3 provided by law or under this Agreement.

4
5 **X. WAIVER OF DEFAULT OR BREACH**

6 Waiver of any default by either party shall not be considered a waiver of any subsequent default.
7 Waiver of any breach by either party of any provision of this Agreement shall not be considered a
8 waiver of any subsequent breach. Waiver of any default or any breach by either party shall not be
9 considered a modification of the terms of this Agreement.

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1 IN WITNESS WHEREOF, the parties have executed this Agreement, in the County of Orange,
2 State of California.

3
4 ORANGE COUNTY SANITATION DISTRICT

5
6
7 BY: _____

DATED: _____

8
9 TITLE: Chairperson

10
11
12 COUNTY OF ORANGE

13
14
15 BY: _____

DATED: _____

16 CHAIRMAN OF THE BOARD OF SUPERVISORS

17
18
19 SIGNED AND CERTIFIED THAT A COPY
20 OF THIS DOCUMENT HAS BEEN DELIVERED
21 TO THE CHAIRMAN OF THE BOARD.

22
23
24 _____

DATED: _____

25 DARLENE J. BLOOM
26 Clerk of the Board of Supervisors
27 of Orange County, California

28
29
30 APPROVED AS TO FORM
31 OFFICE OF THE COUNTY COUNSEL
32 ORANGE COUNTY, CALIFORNIA

33
34
35 BY: _____

DATED: _____

36 DEPUTY

37 //

1 EXHIBIT A
2 SERVICES TO BE PROVIDED BY
3 COUNTY OF ORANGE, HEALTH CARE AGENCY
4 FOOD PROTECTION PROGRAM
5

6 **I. FIELD FUNCTIONS**

7 Conduct one food service establishment FOG Control Program Kitchen BMP screening inspection
8 annually. Inspections will be conducted at those facilities identified in the COUNTY Food Protection
9 Program inventory as unpackaged food facilities. Environmental Health Specialists will report
10 observations of noncompliance to DISTRICT; no FOG separation/containment/interceptor equipment
11 inspections, follow up inspections, enforcement actions, additional inspection information, or joint
12 inspections will be made or required. COUNTY will provide DISTRICT with the inventory (names and
13 addresses) of unpackaged food facilities. DISTRICT will provide COUNTY the jurisdictional
14 boundaries of the participating agencies and provide a listing of the inventoried unpackaged food
15 facilities within the boundaries of each participating agency. Kitchen Best Management Practices
16 (BMPs) screening inspections shall:

- 17 1. Verify the removal of garbage disposals
- 18 2. Verify the use of drain screens (sinks, floor sinks, floor drains)
- 19 3. Review fats, oils, and grease maintenance logs or manifests
- 20 4. Verify the presence of kitchen signage outlining proper grease disposal and dry scraping of
21 dishes
- 22 5. Verify the presence of Kitchen BMP Training records
- 23 6. Verify use of FOG recycling containers (yellow grease and proof of recycling records)
- 24 7. Provide education and outreach that will consist of disseminating literature provided by the
25 DISTRICT
- 26 8. Observe evidence of improper FOG disposal within the food service establishments
27

28 **II. ADMINISTRATIVE FUNCTIONS**

29 COUNTY will report Kitchen BMPs observations to one centralized location agreed to between
30 COUNTY and DISTRICT. COUNTY will revise the Food Facility Inspection Report by adding fields
31 pertaining to Kitchen BMPs observations. COUNTY will create a database query that identifies all the
32 unpackaged food facilities that received Kitchen BMPs screening inspection and transfer to the
33 DISTRICT annually. COUNTY will perform quality assurance on Kitchen BMP data prior to transfer
34 to DISTRICT. However, DISTRICT may periodically audit COUNTY's records to ensure that all the
35 appropriate data is being procured, processed, and transferred. Kitchen BMP screening inspection
36 observation data will be provided no later than the 15th of the month following an inspection. COUNTY
37 will transfer screening inspection data electronically to DISTRICT or other mutually agreed upon

1 mechanism. COUNTY will perform program evaluations periodically to ensure that each facility
2 requiring an inspection has received one within the specified time period and to review time values.

3
4 **III. TRAINING**

5 COUNTY will create a training presentation for COUNTY Food Protection Program staff.
6 COUNTY will provide training to the COUNTY Food Protection Program staff on Kitchen BMP
7 screening inspections and allow DISTRICT and their program-related designees and contracted Co-
8 Permittees to observe. Refresher training will be left to the discretion of COUNTY. COUNTY will
9 incorporate Kitchen BMP screening components into the new Specialist-training program.

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