



AGENDA REPORT
 SAN CLEMENTE CITY COUNCIL MEETING
 Meeting Date: January 7, 2014

Agenda Item 6-D
Approvals:
 City Manager ET
 Dept. Head WEL
 Attorney JAG
 Finance JV

Department: Public Works / Engineering
Prepared By: David Rebensdorf, Assistant City Engineer

Subject: *APPROVAL OF AN AGREEMENT WITH WATER EMERGENCY RESPONSE ORGANIZATION OF ORANGE COUNTY (WEROC).*

Fiscal Impact: None.

Summary: Staff recommends the City Council approve an Indemnification Agreement with Water Emergency Response Organization of Orange County.

Background: The WEROC organization was established in 1983 to promote and coordinate county-wide emergency preparedness, planning and response efforts on behalf of all Orange County water and wastewater public agencies. WEROC consists of 35 participating water and wastewater utilities and is administered by the Municipal Water District of Orange County. WEROC serves as the point of contact between local water and wastewater agencies, the Metropolitan Water District of Southern California and Orange County's Emergency Operations Area.

WEROC provides ongoing training and support to its participating member agencies, including keeping them up to date on the latest security and anti-terrorism practices, hosting training activities and providing disaster response coordination of information, mutual aid and recovery planning. WEROC carries a large database of equipment, supplies and manpower from each agency that can be called upon during an emergency situation. While the City has not been a signatory to the Agreement, the City has participated in training activities and has received equipment from other participating agencies through WEROC during an emergency situation. Staff recommends the City Council formally approve the Agreement. Funding for WEROC is already covered in the City's administrative core costs through MWDOC, there is no additional funding needed for this program.

Recommended Action: STAFF RECOMMENDS THAT the City Council Authorize the Mayor to sign the Indemnification Agreement with Water Emergency Response Organization of Orange County (WEROC).

Attachments: Orange County Volunteer Emergency Preparedness Organization (now known as WEROC) Indemnification Agreement.

Notification: None.

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY

RESOLUTION NO. 1623

NAME CHANGE OF
VOLUNTEER EMERGENCY PREPAREDNESS ORGANIZATION (VEPO)
TO
WATER EMERGENCY RESPONSE ORGANIZATION OF ORANGE COUNTY (WEROC)

WHEREAS, since 1983, the Volunteer Emergency Preparedness Organization (VEPO) has been the name used to describe the Organization that provides communications and mutual aid coordination during emergencies for all water purveyors in Orange County; and

WHEREAS, in an effort to provide a clearer identity for the Organization, the VEPO Steering Committee recommends changing the name to Water Emergency Response Organization of Orange County (WEROC); and

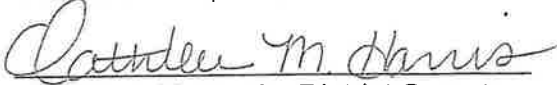
WHEREAS, Municipal Water District of Orange County (MWDOC) provides management oversight for the program and 3/7 of the program funding in coordination with Orange County Water District and Coastal Municipal Water District;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of MWDOC that: The program formerly known as Volunteer Emergency Preparedness Organization (VEPO) will, from this date forward, be renamed and referred to as Water Emergency Response Organization of Orange County (WEROC) for all purposes in identifying the Organization and program.

Said Resolution was adopted by the following vote:

Ayes: Directors Clark, Hartge, Royce and Witt
Noes: None
Absent: Director Davenport
Abstain: None

I hereby certify that the foregoing Resolution was approved by the vote indicated herein above at the joint workshop meeting of the Board of Directors on April 8, 1999.


Cathleen M. Harris, District Secretary
Municipal Water District of Orange County

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ORANGE COUNTY
VOLUNTEER EMERGENCY PREPAREDNESS ORGANIZATION

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT is entered into on the ___ day of _____, 2005, by and between Municipal Water District of Orange County (MWDOC), Coastal Municipal Water District (Coastal), Orange County Water District (OCWD), and the undersigned participants in the Orange County Volunteer Emergency Preparedness Organization (VEPO), (All parties are collectively referred to as "VEPO Participants"), pursuant to California Government Code §895.4.

WHEREAS, VEPO was formed in 1983 by the Orange County water community for the purposes of coordinating an emergency response by all Orange County water agencies in the event of an earthquake, flood, fire, or other regional disaster; and

WHEREAS, to accomplish this purpose each of the VEPO Participants has or will contribute the use of certain of its facilities and equipment and the services of certain of its personnel, both in preparation for an emergency and in response to any emergency situation pursuant to an Emergency Response Plan prepared by VEPO; and

WHEREAS, the VEPO Participants desire to indemnify and hold each other harmless from any liability for injury or property damage incurred by any VEPO Participant or its employees, officers or agents or to third parties in the course of or as a result of their participation in VEPO activities;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the VEPO Participants agree as follows:

1. VOLUNTARY PARTICIPATION

Neither this Agreement, nor the VEPO Emergency Response Plan creates, or shall be deemed to create, any contractual or implied duty on the part of any signatory to provide, or

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attempt to provide, any real property, structures, facilities, tools, vehicles, equipment, machinery, materials, personal property or personnel to any other VEPO Participant or third party. No signatory shall be liable for its failure to provide, or attempt to provide, assistance to any other party. It is the intent of the parties that assistance under the VEPO Emergency Response Plan be provided on a strictly voluntary basis, and that no joint venture be created.

2. LIABILITY FOR JOINING

Notwithstanding Government Code S895.2, it is the intent of the signatories to this Agreement that there shall be no liability assumed by, or imposed upon, any signatory solely by reason of such signatory executing the VEPO Emergency Response Plan or this Agreement."

In the event of any liability, claim, demand, action or proceeding of whatever kind or nature arising out of the rendering of assistance through VEPO, the parties involved in rendering or receiving assistance through VEPO agree to indemnify and hold harmless, to the fullest extent allowed by law, each signatory to the VEPO Emergency Response Plan whose only involvement, in the transaction or occurrence which is the subject of such claim, action, demand or other proceeding, is the execution and approval of the VEPO Emergency Response Plan and this Agreement. Such indemnification shall include indemnity for all claims, demands, liability, damages and costs, including reasonable attorneys' fees and other costs of defense, for personal injury and property damage and is not waived as a result of the uninvolved party's negligent or willful failure to respond in accordance with the VEPO Emergency Response Plan.

3. COVENANT NOT TO SUE OTHER PARTICIPANTS

Each VEPO Participant agrees to assume the entire risk of loss and to indemnify and hold each of the remaining VEPO Participants harmless from any and all claims, liability, or damages for personal injury or property damage incurred by that VEPO Participant or its agents, employees or officers as a result of any defect or dangerous condition of any real property, structures,

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facilities, tools, vehicles, equipment, machinery, materials, personal property or other items supplied or contributed for the use of VEPO by itself or any other VEPO Participant. The right to indemnification shall not be barred by the passive negligence of the VEPO Participant which supplies or contributes the real or personal property for use by VEPO, including, but not limited to, the failure to warn of or take action to correct any defect or dangerous condition if the defect or dangerous condition was not the result of active negligence on the part of that VEPO Participant or its agents, employees or officers.

4. COVENANT TO INDEMNIFY OTHER PARTICIPANTS AGAINST CLAIMS BY
THIRD PARTIES

Each VEPO Participant agrees to assume the entire risk. of loss and to indemnify and hold each of the remaining VEPO Participants harmless from any and all claims, demands, liabilities, costs and damages (including reasonable attorneys' fees and costs of defense) for personal injury or property damage incurred by any third person, or entity, not a party to this Agreement as a result of any defect or dangerous condition of any real property, structures, facilities, tools, vehicles, equipment, machinery, materials, personal property or other items, supplied or contributed for the use of VEPO by that VEPO Participant.

5. COVENANT TO INDEMNIFY OTHER PARTICIPANTS FOR ACTS OF OFFICERS
AND EMPLOYEES

Except as provided in Paragraph 6 hereof, while carrying out their functions and activities under the Emergency Response Plan, each agent, employee and officer of a VEPO Participant shall continue to act within the scope and duties of his employment or relationship with that VEPO Participant and shall not be deemed to be, or act in the capacity of, an agent, employee or officer of VEPO or of any of the remaining VEPO Participants. Except as provided in Paragraph 6 hereof,

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each VEPO Participant agrees to assume the entire risk of loss and to indemnify and hold the remaining VEPO Participants harmless from any and all claims, liabilities or damages for personal injury incurred by any VEPO Participant, its officers, employees or agents or any third person, not a party to this Agreement as a result of the active negligence or intentional, willful or malicious acts of that VEPO Participant's officers, employees, or agents while engaged in carrying out their duties, functions or activities pursuant to the VEPO Emergency Response Plan.

6. EMPLOYEE CLAIMS.

Any employee, officer or agent of a VEPO Participant who is acting under the direction, supervision or control of an employee, officer or agent of another VEPO Participant pursuant to the VEPO Emergency Response Plan shall, except as otherwise provided under Labor Code §§3600.2 through 3600.6, be considered to be the special employee of the VEPO Participant which is directing, supervising or controlling the activity and the general employee of his or her regular employer while engaged in carrying out duties, functions or activities pursuant to the VEPO Emergency Response Plan. The special employer, if any, and general employer, shall indemnify and hold all other VEPO Participants harmless from any and all claims, liabilities or damages for personal injury incurred by such officers, employees or agents while engaged in carrying out their duties, functions or activities pursuant to the VEPO Emergency Response Plan, notwithstanding any passive negligence of other VEPO Participants.

It is the intent of the parties that personnel made available through VEPO be insured against loss or injury through the Workers Compensation insurance of those who controlled and directed their work through VEPO.

7. COVENANT TO MAINTAIN INSURANCE OR SELF-INSURE

Each VEPO Participant agrees to obtain and maintain insurance policies naming the remaining VEPO Participants as additional insureds or participate in a self-insurance pool,

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or maintain a reasonably adequate self-insurance fund as appropriate for general liability, workers' compensation, automobile and property owners' liability which will cover all activities, personnel, vehicles, equipment, real property, tools, machinery and personal property of that VEPO Participant while engaged in the VEPO Program. The ability to respond in damages shall be in the following minimum amounts:

- a. General Liability (including bodily injury): \$1,000,000 per occurrence.
- b. Workers' Compensation: \$200,000 per occurrence
- c. Automobile Coverage: Compliance with Vehicle Code Section 16430 for vehicles owned or leased by the VEPO Participant.
- d. Property Owner's Liability, if applicable: \$1,000,000 per occurrence

8. ARBITRATION

The parties to this Agreement acknowledge that in the event of a claim for personal injury or property damage arising out of a VEPO activity, it would probably be in the best interests of the VEPO Participants and their insurers to submit the issue, of which VEPO Participant or Participants has the ultimate duty to indemnify the others, to binding arbitration and that the party or parties determined to be ultimately responsible conduct the defense of the claim on behalf of the other VEPO Participant defendants in the event of a lawsuit.

It is the intent of the parties to encourage the use of binding arbitration to effectuate the terms of this Agreement whenever possible. Therefore, each VEPO Participant agrees that, as soon as possible after receiving notice of any claim arising out of a VEPO activity, that VEPO Participant will notify all VEPO Participants in writing of the existence of the claim or potential claim.

Upon receipt of notice of a claim or potential claim arising out of a VEPO activity from a claimant or another VEPO Participant, each VEPO Participant, which is not self-insured, will notify

its insurance carrier of the existence of the claim and of the terms of this Agreement. If the insurance carriers of VEPO Participants and self-insured VEPO Participants agree to submit the issue of the obligation to indemnify under this Agreement to binding arbitration, the parties hereto agree not to object to arbitration.

Nothing herein shall be construed as a consent or undertaking on the part of any insured VEPO Participant to pay all or any portion of the costs of arbitration or other costs which it would not otherwise be obligated to pay under its insurance policy in the absence of this Agreement.

9. EXECUTION IN COUNTERPARTS

This Agreement shall be executed by each VEPO Participant in duplicate originals, each of which shall be considered an original Agreement. This Agreement shall not become effective as to any VEPO Participant until all VEPO Participants have executed this Agreement and have delivered an executed original to the VEPO Coordinator who will provide each VEPO Participant with a photocopy of all executed signature pages and a list of all Participants. Prior to the admission of any additional agencies to the VEPO Program, such agency shall be required to execute this Agreement and comply with this provision.

10. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the original Participants and all parties who may subsequently enter into this Agreement, and their officers, agents, employees, successors and assigns. The names of the VEPO Participants, all of which are signatories to this Agreement, are and shall be set forth on the list attached hereto as Exhibit "A" and incorporated herein by reference. Additional Participants may be added to the list from time to time upon execution of this Agreement and compliance with Paragraph 5 hereof. Such additions shall automatically constitute an amendment of this Agreement without further action by existing

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Participants and shall not void or invalidate this' Agreement.

11. MARS PROGRAM

It is the understanding and intention of the VEPO Participants that the VEPO program will be coordinated with the MARS program established by Metropolitan Water District of Southern California and that the terms and conditions hereof shall apply with equal force and effect to activities performed under the MARS program.

12. CAPTIONS

The Captions heading the various paragraphs of this Agreement are for convenience only and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

IN WITNESS WHEREOF, each of the VEPO Participants has caused this instrument to be executed by its authorized agent or official evidencing the consent of the legislative body hereto.

DATED: _____

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
(MWDOC)

ATTEST: _____

By

DATED: _____

CITY OF SAN CLEMENTE

ATTEST: _____

By

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EXHIBIT "A"

VEPO PARTICIPANTS

This list constitutes a complete list of VEPO Participants.

City of Anaheim

City of Brea

City of Buena Park

City of Fountain Valley

City of Fullerton

City of Garden Grove

City of Huntington Beach

City of La Habra

City of La Palma

City of Newport Beach

City of Orange

City of San Juan Capistrano

City of Santa Ana

City of Seal Beach

City of Westminster

Costa Mesa Sanitary District

East Orange County Water District

El Toro Water District

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Golden State Water Company

Irvine Ranch Water District

Laguna Beach County Water District

Mesa Consolidated Water District

Midway City Sanitary District

Moulton Niguel Water District

Municipal Water District of Orange County

Orange County Sanitation District

Orange County Water District

Santa Margarita Water District

Serrano Water District

South Coast Water District

South Orange County Wastewater Authority

Trabuco Water District

Yorba Linda Water District

