



## COUNTY OF PLACER

OFFICE OF  
COUNTY EXECUTIVE  
THOMAS M. MILLER, County Executive Officer

### BOARD MEMBERS

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District 1

JIM HOLMES  
District 3

ROBERT M. WEYGANDT  
District 2

EDWARD "TED" M. GAINES  
District 4

BRUCE KRANZ  
District 5

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**TO:** The Honorable Board of Supervisors  
**FROM:** Thomas M. Miller, County Executive Officer  
By: Mary Herdegen, Senior Management Analyst *mt*  
**DATE:** October 24, 2006  
**SUBJECT:** Air Pollution Control District (APCD) - Placer County Memorandum of Understanding (MOU)

### ACTION REQUESTED:

Approve a resolution (Attachment 1) authorizing the Chairman to sign the Memorandum of Understanding (MOU) formalizing the relationship between the County and the Placer County Air Pollution Control District (APCD).

### BACKGROUND:

In 2001, the APCD Board received a legal opinion that recommended that the relationship between the APCD, its employees, the District Board, and the County be clarified through the establishment of an MOU between the APCD and the County. Since the spring of 2002, the language in the MOU has evolved through multiple revisions. The final version of the MOU, which reflects consensus on the language by both District and County staff, (Attachment 2) was approved by the APCD Board at its October 12 meeting. On behalf of the County, Supervisors Holmes, Gaines and Weygandt sit on the APCD Board.

The MOU includes the following elements:

- Definitions of relevant terms;
- Services and Facilities that the County provides to the District;
- County policies that apply to the District;
- Details concerning District staff reporting lineages and personnel issues (including employee rights, benefits, privileges, and responsibilities);
- District support provided to the County and Cities;
- Indemnification provisions;
- Employee retirement obligations;
- Term and Amendment provisions.

### FISCAL IMPACT:

There are no direct fiscal impacts to the County as a result of entering into this MOU. The costs for services rendered, support provided, or obligations of the District are addressed through normal budgeting processes or contained in other operating agreements.

TM:MH

The Honorable Board of Supervisors  
ACPD – Placer County MOU

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Attachments:     1) APCD-Placer County Resolution  
                      2) APCD- Placer County MOU

Cc: Placer County Air Pollution Control District Board of Directors  
     Tom Christofk, Placer County Air Pollution Control Officer

# Before the Board of Supervisors County of Placer, State of California

In the matter of:

Resol. No: \_\_\_\_\_

A Resolution approving a Memorandum of Understanding (MOU) formalizing the relationship between the County and the Placer County Air Pollution Control District (APCD).

Ord. No: \_\_\_\_\_

First Reading: \_\_\_\_\_

The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held on, by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

\_\_\_\_\_  
Chairman, Board of Supervisors

Attest:  
Clerk of said Board

WHEREAS, an Air Pollution Control District may enter into an agreement with a County for the provision of facilities, administrative services, professional services, and usual support services, and employee benefits and services; and

WHEREAS, the APCD's resources are relatively limited and it needs to have some flexibility, within the rule of law, in the application of its resources to achieve delivery of its program objectives; and

WHEREAS, APCD staff are comprised of County employees acting as ex officio officers and employees of the APCD; and

WHEREAS, the APCD Board provides for the number of allocations of positions and employees for the APCD, provides for their duties, provides for their compensation, provides for the times at which they shall be appointed, pays its staff from APCD funds, and appoints the APCD Officer; and

WHEREAS, the APCD may contract, by a memorandum of understanding, joint powers agreement, or other agreement, with the County, to provide facilities, and administrative, legal, health coverage, risk management, and other support services (HSC Sec. 40101); and

WHEREAS, the APCD Officer appoints, pursuant to the County's Civil Service System and subject to the discretion of the ACPD Board, all other APCD staff or employees; and

WHEREAS, the APCD Board controls APCD staff and employees with respect to APCD business; and

WHEREAS, the APCD Board and the Placer County Board of Supervisors have joint authority for changes to APCD classifications through the County Civil Service System; and

WHEREAS, Placer County maintains a legal interest in, responsibility to, and authority over its employees working for the APCD; and

WHEREAS, the historic cooperative relationship between the APCD and Placer County has been and continues to be of mutual benefit to both, providing reliable and cost effective services and resources, thereby enhancing the delivery of respective programs and operations by both parties; and

WHEREAS, it is in the best interests of both parties to formalize the relationship regarding the provision of such services by Placer County to the APCD and with respect to their shared responsibilities for employees.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER that the County of Placer approves entering into the Memorandum of Understanding with the Placer County Air Pollution Control District Board of Directors and authorizes the Chairman to sign on behalf of the Board.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE PLACER COUNTY AIR POLLUTION CONTROL DISTRICT  
AND THE COUNTY OF PLACER**

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The Placer County Air Pollution Control District and the County of Placer do hereby agree to the following Memorandum of Understanding (MOU).

**Definition Section.**

**APCO:** Placer County Air Pollution Control Officer and/or Director, appointed by the Placer County Air Pollution Control District Board of Directors on a temporary or permanent basis.

**CITY:** Any member city of the Placer County Air Pollution Control District.

**CITY MANAGER:** The manager or executive, or designee, of any member city of the Placer County Air Pollution Control District.

**CEO:** Placer County Executive Officer or designee.

**COUNTY:** The County of Placer.

**COUNTY BOARD:** The County of Placer Board of Supervisors.

**COUNTY POLICY:** Written County codes, rules, guidelines, policies, procedures, or practices.

**DISTRICT:** Placer County Air Pollution Control District, a body corporate and politic and a public agency of the state.

**DISTRICT BOARD:** Placer County Air Pollution Control District Board of Directors.

**DISTRICT BUSINESS:** Matters relating to administration, regulation, enforcement, and organizational issues respecting the DISTRICT, California Air Pollution Control Laws, the Federal Clean Air Act, and federal air pollution control laws and regulations, and local Air Pollution Control Districts' Rules and Regulations, including but not limited to, the DISTRICT budget including allocation of positions, matters before the DISTRICT BOARD and other DISTRICT Committees and Boards, appointment of employees, and assignment of DISTRICT work to employees.

**DISTRICT STAFF:** Placer County employees working for the Placer County Air Pollution Control District as ex officio employees and officers.

**POLICY:** Written code, rule, guideline, policy, procedure, or practice.

## Agreement.

1. **Services and Facilities.** Services and facilities, which the COUNTY has historically provided to the DISTRICT are identified in **Attachment "A"**. Attachment "A" also contains an identification, where appropriate, that the DISTRICT will no longer continue to obtain this service or use of this facility from the COUNTY, either in whole or in part. Unless otherwise provided at law, or unless the COUNTY agrees to provide a service or facility for less, the DISTRICT will pay COUNTY for its services and facilities at the normal and customary rate that the COUNTY charges for such or similar services and facilities to similarly situated entities. Where the COUNTY intends to increase the rate paid by the DISTRICT for any service or facility subject to this MOU, and where said increase exceeds the CPI<sup>1</sup> adjusted rate assessed for that service or facility during the prior fiscal year, or where the COUNTY desires to provide services that are currently identified as A-87 charges through a different methodology, the COUNTY will give the DISTRICT notice of its intended increase or change, in order to allow the APCO sufficient time to assess and obtain direction from the DISTRICT BOARD regarding whether the DISTRICT should continue to obtain that service or facility from the COUNTY under the new proposed rate or methodology. For proposed changes to A-87 charges the COUNTY will give the DISTRICT 4 (four) months notice. For proposed changes to other charges, including facilities charges, the COUNTY will give the DISTRICT 12 (twelve) months notice.

The DISTRICT will pay for said services through the COUNTY PAS system, or its successor system, or through direct payment, where appropriate. If a present or future service or facility use, provided to the DISTRICT by the COUNTY is not included in Attachment "A", it will be presumed that the parties intended that the DISTRICT will obtain this service or facility from the COUNTY until this MOU is otherwise modified as to that service or facility. Nothing contained herein shall preclude the parties from modifying the services or facilities contracted for pursuant to the MOU.

2. **Policies.** COUNTY POLICIES that the DISTRICT and its STAFF have historically adhered to are identified in **Attachment "B"**. Attachment "B" also contains an identification of whether a particular COUNTY POLICY will continue to apply to the DISTRICT; whether a COUNTY POLICY will apply either in whole, in part, or as modified; or whether the DISTRICT is excluded from the COUNTY POLICY and/or whether the DISTRICT will adhere to an alternate POLICY approved by the DISTRICT BOARD. If a present, predecessor, or future COUNTY POLICY is not included in Attachment "B", it will be presumed that the parties intended that the DISTRICT will adhere to said COUNTY POLICY until this MOU is otherwise modified as to that COUNTY POLICY. Nothing contained herein shall preclude the parties from modifying the POLICIES that the DISTRICT adheres to pursuant to the MOU.

3. **APCO.**

A) The DISTRICT BOARD will not delegate, to the COUNTY or to any CITY, or to any officer thereof, its authority to hire or terminate the APCO.

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<sup>1</sup> CPI as reported by the State of California Department of Industrial Relations Consumer Price Index for all Urban Consumers in California showing the difference between the previous calendar year's annual average and the preceding year's annual average that historically is published in February of each calendar year.

B) As to DISTRICT BUSINESS, The APCO receives his/her direction from and reports to only the DISTRICT BOARD.

C) The DISTRICT BOARD shall have the authority to set the salary of the APCO. The DISTRICT BOARD'S determination in this regard shall not be subject to the provisions of any COUNTY compensation plan.

D) As to personnel-type issues involving any DISTRICT STAFF, including employee rights, benefits, privileges, and responsibilities, and as to matters related to COUNTY POLICIES, services, and facilities, the APCO has access to and may consult with the DISTRICT BOARD and CEO. All performance and other personnel-type related evaluations of the APCO will be performed by the DISTRICT BOARD. The CEO may, at the CEO's discretion, provide input to the DISTRICT BOARD and/or the APCO on any matters identified in this subparagraph. Where allowable by law, and when authorized by the APCO or Chairman of the DISTRICT BOARD, such input by the CEO may be given to the DISTRICT BOARD in closed session. When authorized by the Chairman of the DISTRICT BOARD, the CEO may provide input regarding the APCO to the DISTRICT BOARD in closed session without the APCO present.

#### 4. District Staff.

A) As to DISTRICT BUSINESS, DISTRICT STAFF other than the APCO receive their direction from and report to the DISTRICT BOARD through the APCO. As to personnel-type issues, including employee rights, benefits, privileges, and responsibilities, DISTRICT STAFF other than the APCO, receive their direction from and report to the APCO, but additionally have access on these issues to any other appropriate COUNTY individual or entity.

B) The DISTRICT BOARD authorizes the appropriate representatives of the COUNTY BOARD to continue to collectively bargain on its behalf with respect to the setting of wages and benefits for DISTRICT STAFF. The DISTRICT BOARD authorizes the COUNTY BOARD to act on its behalf with respect to reaching agreements as part of the collective bargaining process on these issues. The DISTRICT BOARD will accept the salary, wage, and benefits agreed to for DISTRICT STAFF by the COUNTY BOARD as part of the collective bargaining process. Upon completion of negotiations, applicable agreements will be submitted to the DISTRICT BOARD for any necessary budget considerations and any related matters.

C) Classification actions affecting DISTRICT positions or classifications will generally be handled the same as any other COUNTY position. For proposed changes in Job Specifications or classifications that exist only in positions held by DISTRICT STAFF, any request for a proposed study or other change will be initiated by the APCO to the COUNTY Personnel Director or designee for handling, and any proposed action will come back to the DISTRICT BOARD prior to any final action. Proposed changes in positions/ classifications that effect positions held by a broader class than only DISTRICT STAFF may be initiated by the COUNTY without a request from the DISTRICT BOARD. The DISTRICT BOARD will make necessary budget adjustments resulting from such classification actions.

D) This MOU is intended only to memorialize the particulars of the relationship between the DISTRICT and the COUNTY. It is not intended, nor should it be construed, to affect the relationship between any employee and the DISTRICT or between any employee and the COUNTY. This MOU does not create any beneficial right or interest for any employee.

5. **District Support to COUNTY & CITIES.**

A) At the request of the CEO, the APCO will provide administrative or other support to the CEO on issues related to COUNTY POLICIES, services, or facilities, or DISTRICT STAFF as those relate to DISTRICT BUSINESS. If the DISTRICT enters into an agreement with any CITY for the provision of services, facilities, or STAFF, then at the request of the CITY MANAGER, the APCO will provide administrative or other support to the CITY MANAGER on issues related to the services, facilities, or STAFF provided by the CITY.

B) At the request of the CEO or a CITY MANAGER, the APCO will provide administrative or other support to the CEO or CITY MANAGER on issues related to DISTRICT BUSINESS, including but not limited to, briefings on the DISTRICT BOARD'S agenda. At the request of the CEO or a CITY MANAGER, the APCO will take into consideration the CEO'S or CITY MANAGER'S perspectives on DISTRICT BUSINESS, and where appropriate, will present said perspective to the DISTRICT BOARD.

C) The COUNTY and the DISTRICT will work cooperatively to provide information, functional support, and programmatic support on issues in which they have a shared regulatory interest. The DISTRICT and COUNTY may enter into separate agreements governing the provision of discrete services by the DISTRICT to the COUNTY.

6. **Indemnification.** For any and all claims, suits, actions or special proceedings that may be brought by applicants for DISTRICT employment, panels or boards, or by current or former DISTRICT STAFF regarding the course and scope of their employment with the DISTRICT: The DISTRICT will be responsible to defend and indemnify itself and any individuals who are or were at relevant times members of DISTRICT STAFF, the DISTRICT BOARD, or other DISTRICT panels or boards. The COUNTY will be responsible to defend and indemnify itself and any individuals who are or were at relevant times COUNTY employees or officers and not members of DISTRICT STAFF, the DISTRICT BOARD, or other DISTRICT panels or boards. This provision is not intended to create any rights or cause of action in favor of an individual against the DISTRICT or COUNTY, or to enlarge in any way the obligations of the DISTRICT or COUNTY to provide a defense or indemnification to their employees, officers, or agents, but is intended solely to provide for an understanding between the DISTRICT and COUNTY as to how to apportion their responsibilities for indemnity.

Where the DISTRICT or COUNTY is named as a party to a third party lawsuit or claim, whether judicial or administrative in nature, in which a primary issue of the complaint or cross complaint includes allegations of wrongful conduct involving a COUNTY or DISTRICT employee or allegations amounting to liability in tort, each agrees not to cross complain or otherwise seek indemnity or contribution, of any type or degree, against the other.

7. **OPEB Costs.** DISTRICT employees are part of the CalPERS system for health and retirement benefits, through the COUNTY. Consistent with the goals of the Government Accounting System Board (GASB) 45, COUNTY is setting aside funding to mitigate fiscal impacts of Other Post Employee Benefits (OPEB). Beginning July 1, 2006, DISTRICT shall pay to COUNTY the OPEB for each DISTRICT employee, at a rate at least consistent with the most recent actuarial study, not to exceed the rate actually

paid by COUNTY for other employees, until one hundred percent cost recovery is achieved.

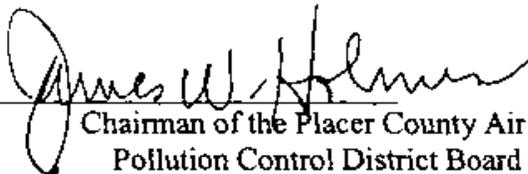
8. **Attachments.** Attachments "A" and "B" to this MOU are incorporated fully as contained herein.

9. **Amendment.** This MOU, including its attachments, or any portion thereof, may be amended in writing by action of the DISTRICT and COUNTY BOARDS. Proposed changes or amendments may be recommended by any member of either BOARD, either BOARD as a whole, the APCO, or the CEO. Proposed changes or amendments will be considered initially by both the APCO and the CEO, with recommendations forwarded to the respective BOARDS. Should the recommendations of the CEO and the APCO be different, it shall be so noted in the staff documentation forwarded to the BOARDS, and the BOARDS will resolve the differences.

10. **Term.** This MOU shall continue in full force and effect until terminated by either party upon sixty (60) days written notice to the other.

11. **Effective Date.** This MOU will be effective on the last date to appear below.

Dated: 10/12/06

By:   
Chairman of the Placer County Air  
Pollution Control District Board

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman of the Placer County  
Board of Supervisors

**ATTACHMENT "A"**

**SERVICES AND FACILITIES**

Services provided by the Department of Facility Services, including building maintenance and utilities.

Services provided by Administrative Services and its divisions (A-87 charge and direct bill, depending on service).

Services provided by the Placer County Counsel's Office (A-87 charge). County Counsel will continue to provide advising services as an A-87 charge. Any litigation services may be provided by the County Counsel's Office pursuant to a separate agreement and at the discretion of the County Counsel.

Services provided by the Auditor-Controller, including payroll and payables (A-87 charge).

Services provided for DeWitt Enterprise Operation Costs, including facilities or office space.

Services provided by the Personnel Department (A-87 charge).

Services provided by the Risk Management Division (A-87 charge).

Services provided by the Public Information Officer (A-87 charge).

Services provided by the Organizational Development Division (A-87 charge).

Other miscellaneous professional services currently provided as an A-87 charges.

## ATTACHMENT "B"

### COUNTY POLICIES

**General provisions applicable to all items contained in this Attachment:** Where a modification indicates that the relevant processes and procedures shall substitute the APCO and the DISTRICT BOARD as the applicable decision makers in the place of COUNTY counterparts, this should be read to substitute the following references and meanings: "Placer County Board of Supervisors" or similar shall mean the DISTRICT BOARD. "Clerk of the Board of Supervisors" or similar shall mean DISTRICT BOARD staff. "Department" or similar shall mean the DISTRICT. "Department heads" or similar shall mean the APCO. "CEO", "County Executive Office, "County Executive", or similar shall mean the APCO.

Placer County Code, Article 2.104, the Placer County Purchasing Policy, and Procurement Department practices pursuant to that article and policy. This article, policy, and related practices will not apply to the DISTRICT except as non-mandatory guidelines (hereinafter the "Procurement Guidelines"). The DISTRICT'S procurement practices will comply with applicable state and federal laws, and the DISTRICT intends to continue to comply with the Procurement Guidelines, in whole or part, and continue to utilize the services of the Procurement Services Division in most circumstances. Where the Procurement Guidelines, in whole or part, are utilized by the DISTRICT, the processes and procedures contained in the Guidelines shall substitute the APCO and the DISTRICT BOARD as the applicable decision makers in the place of COUNTY counterparts identified in the Guidelines.

Placer County Code, Articles 2.12 and 2.116. These articles will continue to apply to the District, where applicable.

Placer County Administrative Rules. These rules will continue to apply to the DISTRICT except as follows. The following chapters will not apply to the DISTRICT: 1, 3, 6, 11, and 15. The following chapters, or parts thereof, will continue to apply to the DISTRICT as modified: In chapters 2, 4, 7, 8, 9, and 14, the processes and procedures contained therein, shall substitute the APCO and the DISTRICT BOARD as the applicable decision makers in the place of COUNTY counterparts identified therein. As to chapter 14, section 14.19, any DISTRICT volunteers shall be covered by the DISTRICT and not the COUNTY for Workers Compensation benefits. Any volunteer injured while performing services for the DISTRICT shall be treated for Workers Compensation purposes as an employee of the DISTRICT. Chapter 4, section 4.1, and the provisions of the Placer County Code, Chapter 2 that it refers to, will not apply to the DISTRICT.

Risk Management Division Risk Management Guidelines. These guidelines will continue to apply to the DISTRICT, other than as modified by the following: Section II, the Risk Transfer Function, shall be applied more liberally to the DISTRICT allowing DISTRICT contracts to be negotiated with different language and coverage limits, where

the DISTRICT and not the COUNTY would be liable for any breach, failure, or lawsuit related to the underlying contract. Contract language should be DISTRICT specific.

Placer County Safety and Health Program Manual. This policy will continue to apply to the District.

Placer County Safety and Loss Prevention Manual. This policy will continue to apply to the District.

Placer County Department Procedures for Reporting Job Related Injuries/Illness. This policy will continue to apply to the District.

Credit Card Program Policy. This policy will continue to apply to the District.

Auditor Controller- Internal Control Policy. This policy will continue to apply to the District.

Placer County Code Chapter 3. The APCO is the "appointing authority" and the "Department Head" for the DISTRICT for purposes of Chapter 3. This Chapter of the Placer County Code will continue to apply to the DISTRICT except as otherwise provided for in this MOU, and except as follows. The following code sections will not apply to the DISTRICT: 3.04.690.D, 3.08.470 (see instead MOU ¶ 4C), 3.08.13.30 (see instead MOU ¶ 4C), 3.08.1340, and 3.12.050. For the processes and procedures contained in the following code sections, joint approval of the COUNTY Personnel Director or designee shall be necessary in lieu of any involvement by the CEO: 3.04.470, 3.04.680, 3.08.1090, and 3.08.1110. The processes and procedures contained in the following code sections shall substitute the APCO and the DISTRICT BOARD as the applicable decision makers in the place of COUNTY counterparts identified therein: 3.04.090, 3.04.140, 3.04.210, 3.04.250, 3.04.260, 3.04.290, 3.04.610, 3.04.690. F., 3.08.1060, 3.08.1070, 3.08.1160, and 3.08.1350.

The applicable Labor MOU between the PPEO and the County of Placer. This MOU will continue to apply to the District.

Policy Against Workplace Violence Policy. This policy will continue to apply to the District.

Placer County Discrimination and Harassment Policy. This policy will continue to apply to the District.

Placer County Voicemail, E-Mail, Internet and Computer Use Policy. This policy will continue to apply to the District.

Placer County Drug and Alcohol Abuse Policy. This policy will continue to apply to the District.

Placer County Employee Handbook. This policy will continue to apply to the District.