

**CITY OF DANA POINT**  
**AGENDA REPORT**

<b>Reviewed By:</b>	
DH	X
CM	X
CA	X

---

**DATE: JULY 3, 2007**

**TO: CITY MANAGER/CITY COUNCIL**

**FROM: OCEAN WATER QUALITY SUBCOMMITTEE  
BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES**

**SUBJECT: APPROVAL OF MAINTENANCE AND SERVICE AGREEMENT FOR URBAN RUNOFF OZONE TREATMENT PILOT PROCESS AT NORTH CREEK**

---

**RECOMMENDED ACTION:**

That the City Council authorize the City Manager or his designee to enter into a Maintenance and Service Agreement with Quantum Ozone Inc. for the urban runoff ozone treatment pilot process at North Creek.

**ISSUES:**

Whether the City Council wishes to authorize the City Manager or his designee to enter into subject Agreement.

**BACKGROUND:**

In early 2006, Robert Stone, President of Quantum Ozone, Inc. approached the City looking for a site to test his patented prototype in-situ ozone treatment system for urban runoff. The City, a leader in innovative solutions to water quality issues, identified North Creek as a potential site. Robert's previous work using his technology to improve water quality at shrimp farms, showed potential to restore water quality in the natural setting at North Creek. The system was installed, as a pilot evaluation project, in an existing structure at North Creek and works to complement the existing trash separation unit. All installation, materials, testing, etc. for the prototype pilot evaluation process have been funded by Quantum Ozone. Preliminary testing shows promise and the Regional Water Quality Control Board as well as MiOcean and State Parks have expressed interest to see continued evaluation of the process.

**DISCUSSION:**

After a review of over one years worth of data, the in-situ ozone treatment system appears to be beneficial to the health of North Creek. The laboratory data indicates a decrease in heavy metals of concern, as well as indicator bacteria. It appears the water quality and wildlife and vegetation habitat at North Creek has improved markedly. Anecdotal evidence of improvements observed in the North Creek area have also been observed by State Park staff and a number of residents.

This ozone treatment process, depending upon results of further testing, may provide another option as a Best Management Practice (BMP) to treat the priority pollutant indicator bacteria, in the upcoming Total Maximum Daily Load (TMDL) mandates.

Innovative pilot projects, such as this one, are necessary in order to continue to develop effective and efficient solutions to water quality problems.

It is recommended that the City execute the Agreement with Quantum Ozone, Inc. to continue the pilot system process for evaluation by leasing the ozone treatment system with all maintenance included in the agreement scope and price.

**NOTIFICATION/FOLLOW-UP:**

Quantum Ozone, Inc.  
Regional Water Quality Control Board – San Diego for testing protocols

**STRATEGIC PLAN IMPLEMENTATION**

In compliance with the Strategic Plan Initiative to restore and maintain the integrity of our ocean waters and beaches.

**FISCAL IMPACT:**

The initial Agreement amount is \$63,000 for the remaining ten months of the pilot period (\$6,300 per month).

\$35,000 was budgeted for in the approved FY07-08 budget based upon an early estimate of \$5,000/month cost of services for seven month's evaluation on the basis that this technology would not be used during the summer diversion period. However, after discussion with the Ocean Water Quality Subcommittee, it was recommended that we operate the ozone treatment process all year in lieu of diversion because of the positive creek improvements seen to date. The higher monthly cost was due to the need to cover greater than expected insurance costs for this prototype technology.

However there is an offsetting savings that occur by not having to pay South Coast Water District ("SCWD") for budgeted North Creek diversion costs that will make up the

\$28,000 difference between the Agreement cost and the particular budget line item. Therefore no additional funding is requested for this Agreement.

Should the process continue to be effective the City Manager is authorized in the proposed Agreement to renew the Agreement to extend it through FY 2008/2009 with the consent of both parties and subject to an inflation adjustment of no more than 5%.

**ALTERNATIVE ACTIONS:**

- 1. Do not authorize City Manager or designee to execute the contract with Quantum Ozone, Inc.
- 2. Other action as directed by the City Council

**ACTION DOCUMENTS:**

A. [Proposed Agreement](#).....4

**SUPPORTING DOCUMENTS:**

B. [Ocean Water Quality Subcommittee Action Minutes, March 13, 2007](#).....8

**Action Document A – CONTRACT AGREEMENT**

CITY OF DANA POINT  
SHORT FORM CONTRACT AGREEMENT  
FOR MAINTENANCE WORK

**ANNUAL MAINTENANCE WORK DESCRIPTION: Installation and maintenance of ozone treatment unit and appurtenances in North Creek CDS unit.**

This Contract Agreement ("Contract") is by and between the City of Dana Point, as "City", and Quantum Ozone, Inc., as "Contractor". Contractor at all times shall remain as to the City a wholly independent contractor. The City and Contractor mutually agree as follows:

**Section 1:** Contractor agrees to perform work as specifically authorized by the City, hereafter referred to as the "Contract Work", Exhibit A. Contract Work is only allowed if a specific quote for the work item is provided and authorized by the City. All Contract Work shall be performed consistent with City Standards, the City's Standard Encroachment Conditions, City Ordinances and all applicable laws and regulations. Contractor agrees to furnish all materials, labor and incidentals to perform the Contract Work for the Project. Contractor shall secure an encroachment permit from the City prior to commencement of work. Equipment furnished by Contractor hereunder is leased to City for the duration of the Contract, and title to such equipment remains with Contractor.

**Section 2:** City agrees to pay the Contractor a maximum of \$ 63,000.00 over the course of this Contract (the "Contract Amount") for the Contract Work. All expenditures for Contract Work per this Contract shall be specifically authorized by the City in advance of completing any Contract Work. The authorized expenditures as part of the Contract Amount would be considered full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. The Contract Amount covers all expenses and all unforeseen difficulties, suspension of the work, and all other unknowns. Should the process continue to be effective the City Manager is authorized to renew the Contract to extend it through Fiscal Year 2008/2009 with the consent of both parties and subject to an inflation adjustment of no more than 5%.

**Section 3:** Contractor represents and agrees that each of its employees will be properly qualified, and will use reasonable care in the performance of their duties. City and Contractor agree that no contractor's license is required for this type of maintenance contract. If Contractor does not complete or satisfactorily perform (at the sole reasonable discretion of the City) the Contract Work, City may terminate the Contract and Contractor shall be liable to City for all of City's costs to properly complete the Contract Work.

**Section 4:** Contractor agrees to protect, indemnify, defend and hold harmless City and all of its officers, agents and employees from any lawsuits, claims, demands or causes of action, including related expenses, attorney's fees, and costs, based on, arising out of, or in any way related to the work performed or undertaken by Contractor hereunder.

**Section 5:** Contractor shall provide commercial general liability insurance coverage for the performance of its obligations under this Contract in a form and type acceptable to City in the coverage amount of \$ 1,000,000. Contractor shall add the City and its officers, agents and employees as additional insureds under the required insurance. Contractor shall provide worker's compensation insurance as required by law. The City, upon 120 days advance written notice, may require that Contractor provide additional types and forms of insurance at City's sole

and reasonable discretion based upon the nature of the Project and the Contract Work. The Certificate of Liability Insurance shall be submitted on Accord form 25-S in the amounts listed above and said certificate shall be modified to require that the City be given 30 days written notice by certified mail of any cancellation or reduction in available limits or changes in the terms of coverage. Contractor shall provide City with a labor and materials bond and performance bond for the Contract Work, unless specifically waived by City.

**Section 6:** If trenching is required, the requirements in Exhibit B apply.

**Section 7:** The Contract shall be governed and interpreted by the laws of the State of California. Any litigation concerning this Contract shall take place in the state or federal courts located in Orange County, California.

**Section 8:** If any provision of this Contract is found to be invalid or unenforceable, the remainder of the Contract shall remain valid and enforceable.

**Section 9:** Contractor affirms that the signature(s) hereto is/are sufficient to bind the Contractor to this Contract. The Contract may be signed in counterparts.

**Section 10:** The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least thirty (30) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City for previously performed work. Additionally, this Agreement may be terminated by written consent of both the City and the Contractor.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Contract to be executed this \_\_\_\_ day of June, 2007.

**CITY OF DANA POINT:**

**CONTRACTOR:**

By: \_\_\_\_\_  
Director of Public Works or Designee

\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Lic. No. \_\_\_\_\_ Class \_\_\_\_\_

Fed. Tax ID No. \_\_\_\_\_

### **Exhibit A: Contract Work**

Contractor will, under the terms of this Agreement, lease one of its patented ozone generation units ("Ozone Unit") and other ancillary urban run-off treatment appurtenances to the City for the Term of this Agreement. Contractor will install its Ozone Unit in the City's North Creek CDS unit. City shall provide Contractor with all necessary electrical utilities and site approvals for such installation and operations, including an above-ground enclosure.

Contractor shall make all repairs necessary to the safe and efficient operation of the Ozone Units and other urban run-off treatment appurtenances and provide service as often as necessary, but not less than every week. Each week, Contractor shall examine, adjust, lubricate, and, if conditions warrant, repair or replace the Ozone Unit or other appurtenances.

Contractor shall operate its Ozone Units for the purpose of treating urban run-off which enters into the North Creek CDS unit. Contractor's goal, as determined by the City, is to treat urban run-off which enters the Site through application of oxygen and ozone thus reducing downstream bacteria and metal contaminant counts in the urban run-off that exits from the Site, such that the urban run-off, when sampled analyzed and measured at frequency and locations determined by San Diego Regional Water Quality Control Board (regulatory agency), shows acceptable reduction in indicator bacteria and metals levels. Contractor's urban run-off treatment shall also increase clarity and reduce odor in the downstream run-off.

City shall, at its own cost, sample, analyze and measure urban run-off that has been treated by Contractor at the Site. Independent, approved, industrial wastewater sampling and testing laboratories, shall analyze such samples with results being provided to City and Contractor at a frequency determined by regulatory agency. City shall also bear responsibility for ongoing and regular maintenance and cleaning of the Site and its existing incoming and outgoing infrastructures as long as such maintenance is not caused by Contractor's performance under this Agreement, in which case Contractor shall bear any maintenance and cleaning costs. City is NOT responsible for ANY damage to ANY part of the Ozone Units while performing City maintenance. Contractor, with advance notice from City, shall move his equipment so proper maintenance can be done to the site by City.

If City requests that Contractor perform any of its services at times other than during its regular working hours, such as during a nighttime emergency, then for the services performed during overtime hours the City shall pay to the Contractor an amount in addition to the regular monthly compensation provided for in this Agreement. This additional amount shall be computed by multiplying the total number of overtime

manhours worked by Contractor on behalf of City by the Contractors overtime billing rate of \$125.00 per hour.

Urban run-off samples (for laboratory analysis) may be collected by Contractor and delivered to Sierra Analytical laboratories in Laguna Hills, California for a per service delivered cost of \$120.00 per sample collected.

Pricing of the contract is as follows:

CDS-NORTH CREEK-Monthly budget-based on 10 month contract term

Equipment:

- |    |                                                                         |             |
|----|-------------------------------------------------------------------------|-------------|
| a) | Patented Quantum Ozone Generator Unit<br>(with one backup unit on hand) | \$ 3,500.00 |
| b) | Security enclosure/GPS locator                                          | \$ 150.00   |

Disposables

- |    |                       |          |
|----|-----------------------|----------|
| a) | Aerator filters/ozone | \$ 50.00 |
|----|-----------------------|----------|

Overhead:

- |    |                                  |             |
|----|----------------------------------|-------------|
| a) | General & administrative expense | \$ 200.00   |
| b) | Insurance                        | \$ 2,100.00 |

Service:

- |    |               |           |
|----|---------------|-----------|
| a) | Labor/mileage | \$ 300.00 |
|----|---------------|-----------|

Total: \$ 6,300.00

**Supporting Document B – OCEAN WATER QUALITY SUBCOMMITTEE MINUTES**

---

**CITY OF DANA POINT**  
**OCEAN WATER QUALITY SUBCOMMITTEE**  
**ACTION MINUTES**

---

Tuesday, March 13, 2007  
3:00 – 5:00 p.m.

**City Hall Offices**  
Admin. Conf. Room  
33282 Golden Lantern  
Dana Point, CA 92629

---

**CALL TO ORDER**

**Meeting was called to order at 3:00 p.m.**

**ROLL CALL**      **Council Member Joel Bishop, Wayne Rayfield, Michael Kelly,  
Dick Dietmeier, Brad Fowler, Bill Steinreide**

All Subcommittee members were present. Bill Steinreide, representing the Doheny Longboard Surfing Association (DLSA) was introduced as a new member.

Ex-officio (non-voting) members were also in attendance: Emmanuel Patrascu, representing State Senator Tom Harmans' office, Lou Penrose, representing Congressman Campbell's office, Eileen Takata, representing Orange County Supervisor Pat Bate's office and Joe McDivitt representing SCWD.

**A. APPROVAL OF ACTION MINUTES**

The action minutes of 2/13/07 were approved.

**B. PUBLIC COMMENTS**

Any person wishing to address the Subcommittee during the Public Comments section or on an Agenda item is asked to complete a "Request to Speak" form. The completed form is to be submitted to City staff prior to the Agenda item being called and discussed.

In order to conduct a timely meeting, there will be a three-minute limit per person for the Public Comments portion of the Agenda. State law prohibits the Subcommittee from taking action on a specific item unless it appears on the posted Agenda.

If anyone has handouts to distribute to the Subcommittee, please follow proper procedure and hand them to the City staff. The City staff will see that they are distributed.

**Richard Gardner mentioned that he was in attendance at the public workshop for the new NPDES Permit that was held on March 12, 2007.**

**C. CONSENT CALENDAR**

There are no items on the Consent Calendar.

**No action taken.**

**D. PUBLIC HEARINGS**

There are no Public Hearings.

**No action taken.**

**E. PUBLIC MEETINGS**

There are no Public Meetings.

**No action taken.**

**F. OLD BUSINESS**

There is no old business.

**No action taken.**

**G. NEW BUSINESS**

**ITEM 2: North Creek Pilot Project Presentation**

Robert Stone, Quantum Ozone, presented a summary of the pilot ozone project that has been occurring at North Creek, being funded by him, with oversight and reporting support provided by City staff. The data indicates a decrease in some heavy metals, as well as indicator bacteria. It appears the water quality and habitat at North Creek has improved.

The subcommittee unanimously recommended implementation of a one-year pilot project to lease the system, continue testing and conduct some outreach on the project (i.e. signs or brochure). This project would occur in lieu of diversion and could begin in May 2007, subject to City Council funding.

City Action Items:

- a. Work with RWQCB to extend current investigative order and modify as appropriate.
- b. Request mid-year budget adjustment to cover costs for this FY06-07.
- c. Execute contract with Quantum Ozone.
- d. Develop outreach materials- work with Doheny Interpretive Center, DLSA to spread the word.
- e. Provide regular updates to committee.

**ITEM 3: Private Lateral Update**

Joe McDivitt presented an update on outreach regarding private sewer laterals with root intrusion. Approximately 500 letters will go out in the near future to sites with high root intrusion. From the initial outreach to several hundred requests, approximately 30% responded.

SCWD Action Items:

- a. Continue with letters
- b. Budget for appropriate resources
- c. Work with City on other forms of outreach

Considerable discussion ensued over ways the City and SCWD might work cooperatively to assure residents are cleaning their laterals and helping avoid back-ups and sewer spills. A sample ordinance from Laguna Beach was circulated for review.

**ITEM 4: Strategy to Address Over-Irrigation**

Discussion on this item was initiated; however it was requested to keep this item on the agenda as a long-term discussion item.

City Action Items:

- a. Strategize an outreach approach
- b. Focus on interagency cooperation
- c. Develop Policy in the long-term

**H. STAFF REPORTS**

Lou Penrose was asked to solicit his support with Congressman John Campbell regarding the Doheny State Beach EPI and Microbial Source Tracking Studies Appropriations earmark as well as the Corps of Engineers Dana Point Harbor WRDA authorization through Energy and Water.

**I. MEMBER COMMENTS**

None.

**J. ADJOURNMENT**

The *next* regular meeting of the Ocean Water Improvement Subcommittee is April 10, 2007 at 3:00 PM (2<sup>nd</sup> Tuesday of the month), unless otherwise directed by the Subcommittee members.

**The meeting was adjourned at 5:05 p.m.**