

RESOLUTION NO. 2009-260

Adopted by the Sacramento City Council

May 5, 2009

AGREEMENT: HAZARDOUS MATERIALS RESPONSE TEAM MUTUAL AID WITH COUNTY OF SACRAMENTO

BACKGROUND

- A. The County of Sacramento has contracted with the Sacramento City Fire Department for emergency hazardous materials response since 1982.
- B. On June 29, 2004, the City Council approved City Agreement No. 2004-04, a 5-year agreement for Fiscal Year (FY) 2004/05 through FY2008/09 to continue providing hazardous material response service to the County of Sacramento. This current agreement expires on July 1, 2009.
- C. The Sacramento City Fire Department Hazardous Materials Response Team provides hazardous materials response services to the County of Sacramento. This includes fire protection agencies of Sacramento County consisting of the: Cosumnes Fire Department, City of Folsom Fire Department, Isleton Fire Protection District, Isleton Fire Department, Wilton Fire Protection District, Walnut Grove Fire Protection District, Sacramento County International Airport Fire, Herald Fire Protection District and Delta Fire Protection District.
- D. For FY2009/10, the County of Sacramento will pay a flat amount of \$339,334. For each of the following four fiscal years, the fee will be adjusted annually a minimum of 3% as delineated in the contract.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager, or his designee, is hereby authorized to execute the 5-year Hazardous Response Team Mutual Aid Agreement with the County of Sacramento with an expiration date of July 1, 2014.

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- Exhibit A Hazardous Response Team Mutual Aid Agreement with the County of Sacramento

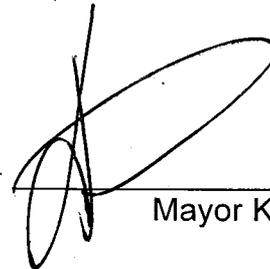
Adopted by the City of Sacramento City Council on May 5, 2009 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

COUNTY OF SACRAMENTO AGREEMENT NO. # _____

AGREEMENT

This AGREEMENT is made and entered into as of this ____ day of _____, 2009, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and THE CITY OF SACRAMENTO, a municipal corporation of the State of California (hereinafter referred to as "CITY").

RECITALS

WHEREAS, the timely response to and proper management of incidents involving the intentional or unintentional release of hazardous materials are critical to the protection of human health and the environment; and

WHEREAS, the proper management and control of responses to emergency incidents involving hazardous materials requires highly specialized training, equipment, supplies, communications and other resources in order to provide adequate protection for the health and safety of the public and emergency response personnel; and

WHEREAS, CITY has a hazardous materials response teams (hereinafter called "HAZ-MAT TEAM"), with specialized apparatus, equipment and capabilities; and

WHEREAS, the cost of establishing and maintaining a hazardous materials response team capability is so expensive and occurrence of emergency response incidents requiring the specialized expertise of a hazardous materials response team has increased so significantly that the COUNTY has determined that it would be more economical, feasible and appropriate to utilize the services of the HAZ-MAT TEAM available from the CITY rather than to develop and maintain duplicate response teams in various locations in the unincorporated area of Sacramento County; and

WHEREAS, CITY has offered, subject to consideration, to provide the services of their HAZ-MAT TEAM to Cosumnes Fire Department, City of Folsom Fire Department, Isleton Fire Protection District, Isleton Fire Department, Wilton Fire Protection District, Walnut Grove Fire Protection District, Sacramento County International Airport Fire, Herald Fire Protection District and Delta Fire Protection District (hereafter called "COUNTY FIRE DISTRICTS") and to COUNTY under the provisions of this agreement and a separate mutual aid agreement:

WHEREAS, COUNTY and CITY desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CITY agree as follows:

I. SCOPE OF SERVICES

CITY shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

II. TERM

This Agreement shall be effective and commence as of the date first written above and shall end on July 1, 2014.

III. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by certified mail-return receipt requested, addressed as follows:

TO COUNTY

TO CITY

DIRECTOR
Environmental Management
Department
8475 Jackson Road, Suite 230
Sacramento, CA 95826

FIRE CHIEF
Sacramento Fire Department
5770 Freeport Blvd, Suite 200
Sacramento, CA 95822-3516

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt. Notice shall be deemed effective on the date of receipt.

IV. COMPLIANCE WITH LAWS

CITY and COUNTY shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

V. STATUS OF CITY

1. It is understood and agreed that CITY (including CITY employees) is an independent municipality and that no relationship of employer-employee exists between the parties hereto. CITY assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to CITY under the provisions of this Agreement; and as an independent municipality, CITY hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any employee of CITY that an employer-employee relationship exists by reason of this Agreement.

2. It is further understood and agreed by the parties hereto that CITY in the performance of its obligation hereunder comply with NIMS/ICS.
3. If, in the performance of this Agreement, any third persons are employed by CITY, such person shall be entirely and exclusively under the direction, supervision, and control of CITY. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CITY, and the COUNTY shall have no right or authority over such persons or the terms of such employment.
4. It is further understood and agreed that as an independent municipality, and not an employee of COUNTY, CITY assigned personnel shall not have any entitlement as a COUNTY employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. CITY employees shall not be covered by COUNTY's worker's compensation; nor shall CITY employees be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.
5. It is further understood and agreed that CITY must issue W-2 and 941 Forms for income and employment tax purposes, for all of CITY assigned personnel under the terms and conditions of this Agreement.

VI. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS

1. CITY shall comply with all applicable state, federal and local laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California State Family Code and Chapter 2.160 of the Sacramento County Code. CITY shall comply with all earnings assignment orders with respect to its employees and shall provide the names of all new employees to the New Hire Registry maintained by the California Employment Development Department;
2. Failure to comply with state and federal reporting requirements regarding CITY employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment shall constitute a default under this Agreement. Failure to cure such default within 90 days of notice by the COUNTY shall be grounds for termination of the contract.

VII. BENEFITS WAIVER

1. CITY acknowledges and agrees that CITY employees are not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County

Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CITY or any employee of CITY seek to obtain such benefits from COUNTY, CITY agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

2. CITY agrees to include in all subcontracts subject to this Agreement that subcontractors are not employees of COUNTY and are not entitled to any benefits from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations.

VIII. CONFLICT OF INTEREST

CITY and CITY officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

IX. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

1. CITY agrees and assures COUNTY that CITY shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and that it will not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CITY shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
2. CITY represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and regulations and guidelines issued pursuant thereto.
3. CITY agrees to compile data, maintain records and submit reports as required by law to permit effective enforcement of all applicable antidiscrimination laws and this provision.
4. CITY shall include this nondiscrimination provision in all subcontracts related to this Agreement.

X. INDEMNIFICATION

1. CITY shall indemnify, defend and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees, and volunteers, from and against any and all liability, loss, expense (including payment of reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement, only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional act or omission of the CITY, its officers, employees, or agents (including its volunteers and students).
2. COUNTY shall indemnify, defend, and hold harmless CITY and its officers, directors, agents, employees, and volunteers, from and against any and all liability, loss, expense (including payment of reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement, only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional act or omission of COUNTY, its Board of Supervisors, officers, employees, or agents (including its volunteers).

XI. INSURANCE

Each party, at its sole cost and expense, shall carry insurance - or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverage. Failure to maintain insurance as required in this Agreement is a material breach of contract and may be grounds for termination of the Agreement.

XII. SUBCONTRACTS, ASSIGNMENT

1. Any subcontracting will be subject to all applicable provisions of this Agreement. Subcontracting services delivered under this Agreement shall not in any way relieve CITY of any duty or responsibility under this Agreement and CITY shall remain primarily obligated for the performance of all services.
2. This Agreement is not assignable by CITY in whole or in part, without the prior written consent of COUNTY.

XIII. AMENDMENT AND WAIVER

1. Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or

condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

2. In the event that CITY or any other fire agency adds additional Type 1 Haz Mat Response capabilities, this agreement shall not be altered, amended, or modified for the purpose of reallocating monies paid by the COUNTY for Fire Department Haz-Mat response teams.
3. In the event that CITY or any other fire agency closes a Type 1 Haz-Mat Response Team, the monies allocated by the COUNTY, for Fire Department Haz-Mat response shall be reallocated to the remaining teams.

XIV. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

XV. DIRECTOR

As used in this Agreement, "DIRECTOR" shall mean the Director of the Environmental Management Department, or his/her designee.

XVI. DISPUTES

Any dispute arising under this Agreement shall be decided by DIRECTOR and the City of Sacramento Fire Chief, with the assistance of their operational staff. In the event that the DIRECTOR and the City of Sacramento Fire Chief cannot resolve the dispute, the Sacramento County Executive and City of Sacramento City Manager shall meet within thirty (30) days to consider the matter and reach a decision. In the event that the Sacramento County Executive and City of Sacramento City Manager cannot resolve the dispute, the matter shall be set for arbitration according to the rules of the American Arbitration Association within thirty (30) days after either the Sacramento County Executive or City of Sacramento City Manager requests that the matter be set for arbitration. If the parties cannot agree on selection of an arbitrator, they shall request appointment of an arbitrator by the State Mediation Service. The parties shall share equally the cost of the arbitrator.

XVII. TERMINATION

1. Either party may terminate this Agreement without cause upon one hundred eighty (180) days written notice to the other party.
2. COUNTY may terminate this Agreement for cause upon giving thirty (30) days written notice to CITY should CITY materially fail to perform this Agreement in the time and/or manner specified. Before such termination takes effect, however, CITY shall have thirty (30) days to cure the failure to perform. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper

by COUNTY. If notice of termination for cause is given by COUNTY to CITY and it is later determined that CITY was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph 1 above.

3. COUNTY may terminate or amend this Agreement upon giving one hundred twenty (120) days written notice to CITY, if advised that funds are not available from external sources for this Agreement or for any portion hereof, or if funds in COUNTY yearly proposed and final budget are not appropriated by COUNTY for this Agreement or any portion hereof.
4. If this Agreement is terminated under paragraphs 1, 2 or 3 above, CITY shall be paid for any services completed and provided prior to the date of contract termination, and for all unchangeable obligations incurred by CITY prior to the date of notice. In no event, however, shall COUNTY pay CITY an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination. Unchangeable obligations include those services required to be provided by CITY due to its "continuity of care" obligations.
5. CITY shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expense obligations to a third party that CITY can legally cancel.

XVIII. REPORTS

CITY shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CITY activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

XIX. AUDITS AND RECORDS

Upon COUNTY request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CITY premises, CITY financial and program records related to this Agreement as COUNTY deems necessary to determine CITY compliance with legal and contractual requirements and the correctness of claims submitted by CITY. CITY shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY request at COUNTY expense.

XX. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COUNTY and CITY regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CITY regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

XXI. TRAINING

City Clerk

COUNTY OF SACRAMENTO «TYPE» AGREEMENT NO.«cntrctnubr»

**EXHIBIT A to Agreement
between the COUNTY OF SACRAMENTO,
hereafter referred to as "COUNTY," and
and the CITY OF SACRAMENTO, hereafter referred to as "CITY"**

I. SCOPE OF SERVICES

1. Immediately upon notification of an emergency situation involving hazardous materials that has been classified as a LEVEL II or LEVEL III INCIDENT, the CITY shall dispatch a HAZ MAT TEAM to respond to the scene. If multiply LEVEL II or LEVEL III hazardous materials incidents are occurring simultaneous within the City or County of Sacramento, the determination of the priority of response by a HAZ-MAT TEAM shall be at the discretion of the highest ranking chief officer of the Sacramento Fire Department on-duty or on-call at the time, based upon the assessment of the risks to the public or environment associated with the incident without regard to whether the incident is within the CITY or the unincorporated areas of the COUNTY.
2. Immediately upon arrival at the scene of the emergency hazardous materials incident, the HAZ-MAT TEAM Captain shall report to the Incident Commander having jurisdiction, and shall establish the Haz-Mat Group as identified in the Unified Command System.
3. The CITY must maintain at a minimum one (1) equivalent of a "Type 1" Hazardous Materials Response team as defined by the California State of Office of Emergency Services.
4. The services to be provided by the HAZ-MAT TEAM to COUNTY or COUNTY FIRE DISTRICTS shall include the following:
 - a. Assessing the scene as to the appropriate classification of the level of the incident, determination of any additional personal or environmental protective measures that may be required without further delay and determining the possible need for an additional assistance not already requested;
 - b. Providing rescue to victims, if necessary, and if possible without exposing emergency response personnel to unreasonable life-threatening risks;
 - c. Identification of the types and quantities of any hazardous materials involved, determination of the hazards they pose to life, environment and property, and advice as to appropriate measures necessary to mitigate, contain and suppress the emergency hazardous materials incident;
 - d. Providing advice in the extinguishment of any fires that may exist or pose a threat, if such extinguishment is considered to be essential by the Incident Commander, and in the selection of extinguishing agents to be utilized and the methods of application;
 - e. Providing advice and assistance locating special supplies in the

suppression and containment of the hazardous materials involved in the incident including measures such as temporary diking, diverting, channeling, plugging, removal of fuel, and the elimination of ignition sources.

- f. Providing advice and assistance in the establishment of a Field Command Post in an appropriate and safe location;
 - g. Providing advice and assistance in the establishment of a Resource Pool Staging Area in an appropriate and safe location;
 - h. Providing advice and assistance in the determination and establishment of any restricted (hot) or limited access (warm) zones, and any areas that may need to be evaluated;
 - i. Providing technical coordination with any private sector resources that may be involved in response to the emergency hazardous materials incidents;
 - j. Providing advice and assistance to the County Environmental Management Department, the County Department of Public Works, and the County Office of Emergency Services as may be requested for the purpose of declaring a health emergency or a state of emergency, coordinating emergency response activities of County departments, and clean-up and restoration of the affected site to normal daily use;
 - k. Providing technical information to the Incident Commander for dissemination to the public through the facilities of the Emergency Broadcast System or directly to news media regarding the emergency hazardous materials incident;
 - l. Providing advice and assistance as necessary, in the training of COUNTY FIRE DISTRICTS and COUNTY emergency response personnel; and
 - m. Providing information as to the cost of the response by HAZ-MAT TEAM.
 - n. CITY and EMD agree to operate as delineated in the enforced Sacramento County Area Plan for Emergency Response to Hazardous Materials Incidents.
4. Nothing in this Agreement or any Exhibit thereto shall obligate the CITY to respond outside of Sacramento County.

II. COMPENSATION SCHEDULE

For the services to be provided by CITY, COUNTY shall pay to CITY the following amounts:

For fiscal year 2009-10: The total amount paid to CITY by COUNTY shall not exceed \$339,334.

For fiscal year 2010-11: The total amount paid to CITY by COUNTY shall not exceed \$339,334 adjusted by a percentage increase as

indicated by the United States City Average Consumer Price Index for Urban and Clerical Workers between March 2009 and March 2010 (rounded to the nearest tenth of 1%), not to be less than 3%.

For fiscal year 2011-12:

The total amount paid to CITY by COUNTY shall not exceed the total amount determined for fiscal year 2010-11 adjusted by a percentage increase as indicated by the United States City Average Consumer Price Index for Urban and Clerical Workers between March 2010 and March 2011 (rounded to the nearest tenth of 1%), not to be less than 3%.

For fiscal year 2012-13:

The total amount paid to CITY by COUNTY shall not exceed the total amount determined for fiscal year 2011-12 adjusted by a percentage increase as indicated by the United States City Average Consumer Price Index for Urban and Clerical Workers between March 2011 and March 2012 (rounded to the nearest tenth of 1%), not to be less than 3%.

For fiscal year 2013-14:

The total amount paid to CITY by COUNTY shall not exceed the total amount determined for fiscal year 2012-13 adjusted by a percentage increase as indicated by the United States City Average Consumer Price Index for Urban and Clerical Workers between March 2012 and March 2013 (rounded to the nearest tenth of 1%), not to be less than 3%.

III. BILLING SCHEDULE and INVOICE FORMAT

1. CITY shall submit invoices consistent with the following schedule:

a. Not later than October 15th of each contract year:

Amount totaling one-half (1/2) of the total Agreement amount.

b. Not later than February 15th of each contract year:

Final one-half (1/2) amount of the total Agreement amount.

c. The total amount billed from all Invoices submitted shall not exceed the total contract limit for the contract year.

d. Submitted invoices shall be paid by EMD 30 days after receipt of invoice from SFD.

2. Costs incurred from responding to hazardous materials incidents shall be documented separately by incident. The following Information will be

included:

- a. Date of the incident.
- b. Numbers of hours spent on scene.
- c. Number of personnel responding.