




# TOWN OF FAIRFAX

## STAFF REPORT

### July 15, 2015

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager 

**SUBJECT:** Approve an one-year extension to the Joint Powers Agreement for Hazardous Materials Spills Management

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#### RECOMMENDATION

Authorize the Town Manager to sign the one-year extension to the Joint Powers Agreement for Hazardous Materials Spills Management

#### DISCUSSION

The most recent Joint Powers Agreement for Hazardous Materials Spills Management was finalized in June 2005 and will reach the end of its ten (10) year term on June 30, 2015. The Marin County Fire Chiefs Association (MCFCA) is in the process of assessing opportunities to improve the existing agreement and in doing so would like to extend the term of the agreement an additional year, to expire on June 30, 2016. Extending the term of the agreement will enable the MCFCA to address existing gaps in detection ability, technology, communication and overall hazardous materials response capabilities, as well as coordinate efforts to modernize the agreement.

Approximately 30 years ago, Marin County cities and towns, and the County of Marin decided to manage Hazardous Materials incidents through a Joint Powers Agreement (JPA) which is governed by the Marin County Fire Chiefs Association. The JPA obtains funding from 15 participating signatory agencies, including Marin cities, towns, fire departments and fire districts. Member agencies set policy, approve budgets and provide vision to the management and leadership of the team through the MCFCA.

Multi-agency and multi-jurisdictional responses to hazardous materials emergencies in California are required by the California Emergency Services Act (ESA) to use the Standardized Emergency Management System (SEMS). In addition, local government entities must use SEMS in order to be eligible for any reimbursement of response-related costs under the state's disaster assistance programs.

Local government is only one of the five response levels within the Standardized Emergency Management System. The basic role of a local government is to manage and coordinate the overall emergency response and recovery activities within its jurisdiction. The next level is the Operational Area, which consists of a county and all political subdivisions within the county boundary. The JPA assists in establishing procedures for managing Hazardous Materials incidents throughout the County Emergency Response Operational Area, where emergency response often requires increased resources and coordination of efforts by multiple agencies.

As such, the JPA is essential to preparing the Town for large scale Hazardous Materials Responses and enabling the Fire Department to respond in a manner that is coordinated and mitigates negative impacts to the environment and health and welfare of the community at large.

**FISCAL IMPACT**

The Town's share is paid through the Ross Valley Fire Department.

**ATTACHMENTS**

Extension letter

JPA agreement



# Marin County Fire Chiefs Association

Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930

**Re: Extension of Joint Powers Agreement for Hazardous Materials Spills Management**

Dear Garrett Toy,

As you know, the above referenced Agreement expires on June 30, 2015. I am in the process of reviewing the Agreement and will be contacting all of the agencies during the next 6-9 months to make any necessary improvements.

In the interim, we would like to extend the terms of the Agreement for one more year so that the expiration date would be June 30, 2016. Accordingly, it is hereby requested that you gain approval from your agency for the Agreement's extension for one additional year. County Counsel has indicated that this letter can serve as the extension of the Agreement so long as each Agency signs the letter (below) to be bound by the original Agreement. I have attached the original Agreement for your review.

Please contact me if you have any questions regarding this matter.

Very truly yours, Jason Weber, Marin County Fire Chiefs Association

By signing this letter, The Town of Fairfax agrees to the extension of all of the terms of the **'Joint Powers Agreement for Hazardous Materials Spills Management'** that was signed by the parties in 2005, excepting Section 3, which is hereby modified to have a termination date of June 30, 2016. All other provisions of the Agreement including Section 3 will remain in full force and effect.

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Date

**ATTACHMENT** A handwritten mark consisting of a vertical line and a horizontal line forming a partial 'L' shape.

JOINT POWERS AGREEMENT FOR HAZARDOUS MATERIALS  
SPILLS MANAGEMENT

THIS AGREEMENT, made and entered into this 8<sup>th</sup> day of June, 2005, by and between the following public agencies: Cities of Novato, San Rafael, San Anselmo, Fairfax, Ross, Mill Valley, Belvedere, Tiburon, Sausalito, Corte Madera and Larkspur; County of Marin; Kentfield Fire District; Novato Fire District; Southern Marin Fire District; Tiburon Fire District; Ross Valley Fire Service and Marinwood Community Services District.

RECITALS

This agreement is predicated upon the following facts:

1. Each of the parties to this Agreement is a "Public Agency" as the term is defined in California Government Code Section 6500 and is authorized to enter into Joint Powers Agreements.
2. The parties are responsible for maintenance of public safety and/or fire protection within their respective jurisdiction within the County of Marin, State of California.
3. Pursuant to Government Code Section 6500 et. seq. commonly known as the Joint Exercise of Powers Act, two or more Public agencies may by Agreement jointly exercise any power common to the contracting parties.
4. Each of the parties desire to enter into an agreement with each of the other parties for the purposes of coordinating management of and response to hazardous materials spills, establishing a formula for financing joint expenses for such management and response, and defining signatory agency responsibilities.

NOW THEREFORE, in consideration of mutual benefits, covenants and agreements set forth herein, the parties agree as follows:

SECTION 1 Definitions

These definitions shall include any subsequent amendments, deletions or additions to the above mentioned statutes.

A. Hazardous Material Spill

A hazardous materials spill means an incident or potential incident, which threatens public health or safety involving the unsafe release of a hazardous substance or hazardous waste as defined below. A hazardous substance or hazardous waste means an substance or product for which the manufacturer or producer is required to produce a material safety data sheet prepared pursuant to Section 6390 of the California Labor Code or pursuant to the regulations of the Occupational Safety and Health Administration of the U.S. Department of Labor, or pursuant to the Hazardous Substances Information and Training Act (commencing with Section 6360, Chapter 2.5, part 1 of Division 5 of the California Labor Code), or pursuant to any applicable State or Federal law or regulation; any substance or product which is listed as a radioactive material set forth in Chapter 1, Title 10, Appendix B, maintained and updated by the Nuclear Regulatory Commission; or any substance or product defined as hazardous or extremely hazardous waste by Sections 25115 or 25117 of the California Health and Safety Code and set forth in Sections 66680 and 66685 of Title 22 of the California Code of Regulations. Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, dumping, or disposition into the environment. Any material may be added to the list of hazardous materials set forth by applicable State or Federal law or regulation upon a finding by the County Health Officer that it is a material which, because of its quantity, concentration, physical, or chemical characteristics, poses significant present or potential danger to human health and safety or to the environment if released into the environment.

B. Incident Commander

Incident Commander is the individual responsible for the overall management of the incident and is usually from the agency in which the incident occurred or as designated by the agency.

C. Unified Command

Unified Command is a unified command effort which allows all agencies with responsibility for the incident, either geographical or functional, to manage an incident by establishing a set of common objectives and strategies.

## SECTION 2 Authority and Purpose

A. The purpose of this agreement is to establish a specially trained capability for the expeditious and economical response to hazardous materials spill or potential release on public and private property within the signatories' jurisdictions.

B. The components of this specialized response capability shall consist of a designated unit of the San Rafael Fire Department and trained personnel from the signatory fire agencies, hereinafter referred to as the Hazardous Materials Response Team (HMRT). The HMRT consists of a compliment of apparatus, equipment and trained technicians and specialists. The HMRT shall assist in the control and containment of hazards created by releases and potential releases which exceed the capability of the jurisdiction having primary responsibility, and which shall provide consultation on identifying and managing hazardous materials releases or potential releases in a manner consistent with all local, state and federal laws and regulations regarding such releases.

A County of Marin Hazardous Materials Management Team, consisting of representatives of the Marin County Fire Department, Office of Emergency Services, District Attorney, Sheriff, Health Department and Department of Public Works, shall be dispatched to the incident by County Communications when requested by the Hazardous Materials Response Team or Incident Commander.

## SECTION 3 Terms of Agreement

Except as provided below, the term of this Agreement shall be for ten years, beginning on July 1, 2005 and terminating on June 30, 2015. A signatory agency may withdraw upon ninety (90) days' notice prior to adoption of budget with written notice to all of the then parties.

Each party to this Agreement certifies that it intends to and does contract with all other parties who are signatories of this Agreement. Each party to this Agreement also certifies that the deletion of any party from this Agreement shall not affect this Agreement nor the remaining such party's intent to contract as described above with the other then remaining parties to the Agreement.

#### SECTION 4 Operational Responsibilities

A. As soon as practical upon determining that a hazardous material release or potential release has occurred, the public safety unit first arriving on scene shall:

1. Immediately isolate the scene, deny access to the scene and to protect people and/or livestock in the general vicinity.
2. Notify County Communications of the location of the incident and affected area, the type of incident (traffic accident, pipe breakage, etc.), the type and quantity of hazardous material or the characteristics of the material if its type is unknown, safe and unsafe routes to the scene, and a request to have the Hazardous Materials Response Team immediately requested.

B. Upon notification of a hazardous material release, County Communications will contact the San Rafael Fire Department ECC for dispatch of the Hazardous Materials Response Team and such other resources as the protocol indicates of the jurisdiction in which the spill occurs. (The California Highway Patrol has jurisdiction over State highways.)

C. For each incident, command responsibility shall be delegated according to applicable State law. Where State law does not designate responsibility, each signatory city and County shall specify in writing to the Haz Mat Response Team at regular intervals command authority for incidents within its jurisdiction. The incident commander may request additional assistance as he deems necessary to restore public health and safety.

D. When the Hazardous Materials Response Team determines that specialized resources may be required to mitigate the release or assist with clean-up the Incident Commander shall be advised and provided with the agencies that should be notified.

E. After an incident is under control, as determined by the Incident Commander, the following clean-up protocol shall be followed. First, a reasonable attempt shall be made to give the person(s) responsible for the incident adequate notice and opportunity to remove the hazardous substance. If, in the judgment of the Incident Commander, such opportunity has been adequately provided, considering the conditions,

the Incident Commander may authorize such additional clean-up operations, if appropriate, by (1) the City Public Works Department in which the incident occurred, (2) County Public Works for incidents in the unincorporated area, (3) Cal-Trans on a State highway, or (4) a licensed Hazardous Waste Clean-up Contractor. The Incident Commander may authorize such other clean-up arrangements deemed appropriate for the restoration of public health, safety and nuisance abatement. Clean-up of private property beyond these requirements shall be the responsibility of the property owner under the auspices of the County Health Officer.

F. Signatory agencies shall cooperate with such incident protocols as this agreement may require.

G. Decon Engine Companies are a special resource staffed Type 1 Engine specifically equipped to set-up and perform decontamination. There are numerous Decon Engine Companies within the county. This resource is not normally dispatched at the time of requesting the HMRT.

H. Special Ops Trailers are a special resource. There are three (3) Decon Special Ops Trailers within the county. This resource is not normally dispatched at the time of requesting the HMRT.

#### SECTION 5. Resource Inventory

A. The signatory agencies agree to fund apparatus, equipment, training, medical monitoring, and personal protective equipment as may be required by the fiduciary agent to meet state and federal OSHA regulations pertaining to hazardous materials release response.

B. Each participant to the Agreement shall obtain from their Administrative Agency documentation disclosing the storage location and use of hazardous materials in their jurisdiction for reference by the Hazardous Material Response Team.

#### SECTION 6. Financing

A. The principles for allocating cost responsibility for hazardous material release management shall be:



1. Primary responsibility for all extraordinary costs related to such an incident rests with the person(s) responsible for the spill. Damages and expenses incurred by the Hazardous Materials Response Team shall constitute a debt against the person and/or firm causing the incident and shall be collectable by the fiduciary agent specified in Section 6C of this agreement. Expenses, as stated above, shall include but not be limited to, equipment, personnel committed, and any payments required by the Hazardous Materials Response Team to outside business firms requested by the Team to secure, investigate and monitor remediation and cleanup the incident. Reference Section 13009.6, California Health and Safety Code.

2. The State of California is not liable for any such costs unless one of its officers, employees, or agents is a person described in Section 6(A) 1 above; or unless the costs are associated with a spill for which a disaster is declared.

3. Funding sources for activities of the Authority will consist of contributions made by each party in a manner to be determined by the Marin County Fire Chief's Association.

4. To the extent that signatory agencies are not reimbursed for extraordinary costs of managing an incident or its clean-up, the costs shall be liability of the jurisdiction in which the spill occurred.

5. The Hazardous Materials Response Team shall prepare a proposed annual budget, or any supplemental budget shall be submitted to the Marin County Fire Chief's Association for approval in the time and manner as specified. Public funds may not be disbursed by the Hazardous Materials Response Team without adoption of the approved budget, and all receipts and disbursements shall be in strict conformance with the approved budget.

B. Cost sharing, to support the Hazardous Materials Response Team shall be allocated on a jurisdiction percent of population based on the County of Marin's current census data. Where a Fire District and City share the population, each shall contribute one half of their shared cost.

<u>Jurisdiction</u>	<u>Percent Population</u>
Alto FPD	2.4
Belvedere	1.0
Corte Madera	3.6
County of Marin	11.6
Kentfield	3.0
Larkspur	4.8
Marinwood	2.0
Mill Valley	5.7
Novato City	20.7
Novato FPD	2.6
Ross	1.1
Ross Valley	9.4
San Rafael	21.0
Sausalito	3.1
Tamalpais FPD	3.7
Tiburon City	3.3
Tiburon FPD	<u>1.0</u>
<b>Total</b>	<b>100%</b>

Any non participatory agency shall be responsible for all costs incurred by the Haz Mat Response Team.

D. Pursuant to the requirements of Section 6505.5 of the Government Code San Rafael Fire Department is designated to be the Treasurer, the depository and to have custody of all funds from whatever source and to perform the following functions:

a. Receive and receipt all money for the Hazardous Materials Response Team and place it for credit of the San Rafael Hazardous Material Fund.

#### SECTION 7. Amendment

Non substantial amendments may be made by two-thirds (2/3) vote of the Marin County Fire Chiefs' Association.

#### SECTION 8. Notices

All notices required or given pursuant to this Agreement be made by depositing same in the U.S. mail, postage paid, and addressed as follows:

Hazardous Materials Response Team, c/o San Rafael Fire Department, 1039 C Street,  
San Rafael, CA 94901.

**SECTION 9. Hold Harmless**

Each party shall indemnify and hold each other party harmless from and against all loss, cost, expense, actions or liability occasioned by or arising out of the negligent acts, or negligent failure to perform under the authority of this Agreement by each other party's employees or its agents or contractors.

The tort liability of the Authority shall be controlled by the provisions of Division 3.6 of the Government Code.

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

IN WITNESS WHEREOF, the parties have executed this Joint Powers Agreement as of the day and year first above written.

AGENCY

By 

ATTEST: 