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Resource Management

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**MEMORANDUM OF UNDERSTANDING ESTABLISHING AN INTERAGENCY  
HAZARDOUS MATERIALS TEAM WITHIN SOLANO COUNTY**

**PARTIES**

This Memorandum of Understanding Establishing a Joint Hazardous Materials Response Team within Solano County (“Agreement”), is entered into by and among Solano County (“County”), and the Cities of Benicia, Fairfield, Suisun, Rio Vista, Vacaville and Vallejo (“Cities”).

**RECITALS**

County and Cities (collectively, the “Parties”) desire to establish a unified emergency organization, designated as the **Solano County Interagency Hazardous Materials Team** (“SCIHMT”), for the purpose of establishing a hazardous materials emergency response program; and

SCIHMT shall prepare and carry out coordinated plans for the protection of persons and property in the event of a hazardous materials emergency or disaster; and

SCIHMT shall be governed by a board of directors (“Board”) and shall operate and staff a response team (“Response Team”) with employees of the Parties.

Greater efficiency, cost-savings, planning and response capabilities can be achieved by joining the efforts of the Cities and County through the creation of a Response Team, the centralization of hazardous materials records, coordinated training, and the purchase and use of vehicles and special equipment; and

The establishment of a unified emergency organization will maximize the ability to obtain grant funds and to recover emergency response costs from persons or entities responsible, in whole or in part, for any hazardous materials emergency.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, County and Cities agree as follows:

**A. ESTABLISHMENT OF THE SOLANO COUNTY INTERAGENCY  
HAZARDOUS MATERIAL TEAM**

1. SCIHMT shall prepare and carry out coordinated plans for the protection of persons and property in the event of a hazardous materials emergency or disaster in the County and Cities in accordance with applicable law, including the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, §§ 25500 et seq.) .
2. SCIHMT shall be administered by a Board comprised of seven (7) voting members: one (1) member from each of the Cities and the Solano County

Emergency Services Manager. Each member shall have one (1) vote, for a total of seven (7) votes. Four (4) voting members shall constitute a quorum for the purposes of transacting business, except that less than a quorum may adjourn meetings of the Board. Unless otherwise provided in this Agreement, the affirmative vote of the majority of those present and qualified shall effect the adoption of any motion, resolution, order, or action the body deems appropriate.

3. The Board shall select a Chairperson and Vice-Chairperson from its members and shall appoint a Secretary, who may or may not be a voting member. These officials shall each hold office for a period of one (1) year.
4. The Board may adopt rules and regulations for the conduct of its affairs that are not in conflict with this Agreement.
5. County shall be responsible for general accounting of funds received and disbursed, preparation of invoices to the Parties to this Agreement and to those responsible in some manner for any release or threatened release of hazardous materials to which the Parties respond pursuant to this Agreement, preparation of documents relative to any grant program, and such other functions as may be required by this Agreement, Board rules and regulations, or any other law. The County shall, within sixty (60) calendar days of the end of the fiscal year, provide a summary of all financial activities for that fiscal year to the Parties.
6. SCIHMT shall perform all acts necessary or desirable to effectuate this Agreement. The County Administrator (or delegee) on behalf of the County and the City Managers (or delegees) on behalf of the Cities shall each select at least one (1) member from their Police or Fire Departments to participate in the Response Team. SCIHMT shall adopt criteria and standards for the Response Team in the provision of hazardous materials emergency services by County and Cities.
7. SCIHMT shall adopt standards, which shall apply to the Response Team, indicating the specific levels of training required of personnel, staffing needs, and the type, maintenance and amount of equipment and supplies necessary for particular hazardous materials emergencies. SCIHMT shall further adopt standard operating guidelines governing when and how the Response Team shall respond to emergency calls.
8. SCIHMT shall also adopt procedures relative to the geographical areas for which County and Cities have primary hazardous materials emergency response responsibility.
9. County and Cities retain sole and exclusive discretion as to the specific type, nature and timing of the services performed pursuant to this Agreement.

SCIHMT shall not be responsible for the physical containment or clean-up of any hazardous material, the control of pedestrian or vehicular traffic, or the removal of persons or property from the area around the emergency.

10. The books and records of the SCIHMT and the County with regard to the services it provides for the SCHIMT, including but not limited to administrative and accounting services, shall be open for audit, inspection and copying to the Parties at all reasonable times by their designated representatives. The SCIHMT and County shall maintain for three (3) years after the termination of the SCIHMT all records regarding the SCIHMT.
11. The County received a federal Homeland Security grant and purchased a thirty-eight (38) foot Farber Hazardous Materials vehicle, a twenty (20) foot trailer, and a Ford F-250 pickup truck to be used for SCIHMT purposes. The County holds and will continue to hold title to these three vehicles.

#### **B. EFFECTIVE DATE**

This Agreement shall become effective immediately upon its approval by the Parties' respective governing bodies.

#### **C. OBLIGATIONS OF THE PARTIES**

1. Subject to Article XVI, Section 18 of the California Constitution, beginning on July 1, 2006 and on July 1 of each year thereafter, the Parties shall each contribute a proportionate share of SCIHMT's total annual equipment, capital equipment, training, operational, maintenance, and administrative costs. SCIHMT shall divide the amount of such costs into ten (10) equal shares, with each City paying one (1) share and County paying four (4) shares, one on behalf of each of the four participating Fire Protection Districts (Cordelia FPD, Montezuma FPD, Suisun FPD, and Vacaville FPD).
2. The Parties shall use their best efforts to maintain the agreed-upon number of trained personnel at all times for participation on the Solano County Hazardous Materials Response Team.
3. In the event of withdrawal of any Party during the term of this Agreement, that Party waives any right it may have to any interest in the capital equipment purchased pursuant to this Agreement.
4. Upon termination of this Agreement by all participating Parties, the remaining supplies and equipment shall be divided between the Parties in accordance with their respective proportionate shares.

5. The County of Solano shall be the registered owner of the vehicles purchased or contributed pursuant to this Agreement.
6. Upon unanimous consent of the Parties, additional public entities may join in this Agreement and become Parties. The terms and conditions allowing such joining shall be set forth in an amendment to this Agreement, signed by all of the Parties and approved by resolution of their respective governing bodies.

#### **D. PERFORMANCE OF EMERGENCY SERVICES**

1. Each of the Parties and their respective employees shall assist one another in the performance of all emergency functions to prevent, minimize, and reduce injury and damage resulting from hazardous material emergencies or disasters ("Emergency Services") according to the procedures determined by SCIHMT, so long as the planned action is not contrary to the Parties' respective departmental policies, procedures, and directives, established hazardous materials emergency response methods, or California law. It is understood and agreed by the Parties that directions that may be issued by the employees of one or more Parties to the employees of another Party, relating only to the objectives to be achieved and not the actual means to accomplish such objectives. Nothing in this Agreement shall be construed as creating an employer-employee or principal-agent relationship as between the Parties, and the Parties shall refrain from undertaking actions which may give rise to such relationships.
2. In performing the Emergency Services under this Agreement, each of the Parties shall be responsible for ensuring its employees' compliance with the Party's internal departmental policies, procedures, and directives, established hazardous materials emergency response methods, and California law.
3. In performing the Emergency Services under this Agreement, each of the Parties' employees shall act as independent contractors in relation to the other Parties and their employees. Each Party shall assume responsibility for all personnel costs for its respective employees, including salaries, fringe benefits, overtime, workers' compensation insurance coverage, and federal and state income tax withholding, including but not limited, to the Federal Income Tax, State Income Tax, Federal Insurance Contributions Act, State Unemployment Insurance, and State Disability Insurance, and any other deductions from income that such Party is required to make.
4. Each of the Parties represents and warrants to the other Parties that all employees it may elect to assign to perform the Emergency Services hereunder have undergone proper training and have all required licenses, permits and approvals which are legally required to provide such

Emergency Services. Each Party shall comply with all applicable Federal, State and local requirements pertaining to health and safety protection of its employees, as applicable, including a program to communicate with its employees, as applicable, regarding the significant hazards of work to be performed by such employees under this Agreement.

**E. NO JOINT VENTURE OR GRANT OF AGENCY**

1. This Agreement shall not create among the Parties a joint venture, partnership, or any other relationship of association.
2. Except as the Parties may specify in writing, no Party shall have authority, express or implied, to act on behalf of any other Party in any capacity whatsoever as an agent. No Party shall have any authority, express or implied, pursuant to this Agreement, to bind any other Party to any obligation whatsoever.

**F. TERMINATION**

This Agreement shall terminate as to any Party upon occurrence of any of the following conditions:

1. Notice given by any Party in writing no later than April 1 of any year of that Party's intent to withdraw from this Agreement, effective upon the close of that fiscal year.
2. Upon the mutual written agreement of all of the Parties' governing bodies.
3. Failure of any Party to meet one (1) or more of the terms of this Agreement. In such event, such Party shall be given notice and required to submit a remedial action plan within sixty (60) days to SCIHMT. Failure to implement the remedial action plan within ninety (90) days of its approval by the Board will authorize the Board by majority vote to remove the non-complying Party from this Agreement and the mutual benefits resulting therefrom. Such removal will be effective thirty (30) days from the date of such action.

**G. INDEMNIFICATION**

1. Each of the Parties agree to defend, indemnify and hold harmless each and every other Party and its officers, officials, employees or agents from and against any damages including, but not limited to, attorneys' fees, expert and consultant fees, and other costs and fees of litigation, arising out of the alleged gross negligence or intentional or willful misconduct of the Party, its agents, officers, officials, employees or representatives in the performance of this Agreement. Liabilities arising out of the negligence

of any Party, its agents, officers, officials, employees, or representatives shall be covered by the County's insurance pursuant to Section I(1) herein.

2. The indemnification contained in this Agreement includes, but is not limited to, any violation of applicable law, ordinance, regulation or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal acts of a Party to this Agreement, or any of its agents, officers, employees or representatives in their performance under the terms of this Agreement.
3. It is the intent of the Parties that where responsibility for injury or damages arises out of gross negligence or intentional or willful misconduct of one (1) or more of the Parties, principles of comparative fault will be followed and each such Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that Party's negligence. In the event a claim or suit is filed and liability is based on the alleged gross negligence or intentional or willful misconduct of two (2) or more of the Parties, then such parties shall cooperate and contribute to the defense and indemnity of the claim or suit on an equal basis until such time as comparative fault is established and damages apportioned. At that time, the responsible Parties shall reimburse the other parties for their costs in accordance with their proportionate share of liability.
4. Each Board Member shall notify the other Members, where appropriate, of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification section. The Parties shall cooperate in the defense of such actions brought by others with respect to the matters covered under this Agreement. Nothing set forth in this Agreement shall establish a standard of care for or create any legal rights for any person not a party to this Agreement.
5. The indemnity provisions of this Agreement shall survive the expiration or earlier termination of this Agreement.

#### **H. MUTUAL WAIVER OF SUBROGATION**

1. Except as provided in Section I(1) of this Agreement, the Parties agree that in event of loss due to a claim arising out of any negligence, omission, or failure to act when under a duty to do so, by any of their agents, officers, officials, or employees, against their respective workers' compensation, general liability, and/or auto liability insurance policies, each Party shall look solely to its own insurance for recovery, subject to the principles of indemnity and contribution set forth above.

2. The Parties further agree to waive subrogation against all other parties, and to ensure that any insurance or self-insurance program coverage available to each Party complies with the intent of this section.

## **I. INSURANCE**

1. The County's general liability, automobile liability, and auto physical damage insurance shall be the primary insurance for SCIHMT in all situations except those involving alleged gross negligence or intentional or willful misconduct on the part of the agents, officers, officials, employees, or representatives of one (1) or more of the Parties, in which case the insurance of the involved Party or Parties shall be primary and the indemnification provisions of Section G shall apply.

For all situations in which gross negligence or intentional or willful misconduct is not alleged, the Parties shall all pay an equal share of the County's deductible. For all situations in which gross negligence or intentional or willful misconduct is alleged, each of the involved Parties shall pay the full amount of its own deductible until such time as comparative fault is established and damages apportioned. At that time, the responsible Parties shall reimburse the other parties for their costs in accordance with their proportionate share of liability.

Notwithstanding the above, each of the Parties shall remain solely liable for all workers' compensation, wage and hour, and other employment-related claims made by their respective officers, officials, and employees.

2. Each Party, at its sole cost and expense and for the full term of this Agreement, shall obtain and maintain at least all of the following minimum insurance requirements:
  - a. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage.
  - b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, combined single limit.
  - c. Workers' Compensation: \$1,000,000 per accident for bodily injury or disease.
3. It is acknowledged that each of the Parties to this Agreement maintain self-insurance programs to cover each of their risks and liabilities, and agree to maintain such self-insurance programs at no less than the minimum limits of coverage identified above. In the event any Party purchases commercial insurance, that Party shall provide a certificate of insurance and additional insured endorsement to each other Party.

4. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Parties, and any approval of insurance by the Parties or their insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Parties pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

**J. AMENDMENTS AND NOTICES**

1. This Agreement shall be reviewed annually by the Board and may be amended in writing at any time upon written approval of the governing bodies of all of the Parties to this Agreement.
2. All notices to Parties shall be deemed to have been given when mailed to the address listed for each Party.
3. Notice may be given to the Parties as follows:

Solano County  
Attn: OES Manager  
Solano County Sheriff  
530 Union Avenue  
Fairfield, CA 94533

City of Benicia  
Attn: Fire Chief  
City of Benicia Fire Department  
250 East L Street  
Benicia, CA 94510

City of Fairfield  
Attn: Fire Chief  
City of Fairfield Fire Department  
1200 Kentucky Street  
Fairfield, CA 94533

City of Rio Vista  
Attn: Mark Nelson, Fire Chief  
Rio Vista Fire Department  
350 Main Street  
Rio Vista, CA 94571

Suisun City  
Attn: Fire Chief  
Suisun City Fire Department



701 Civic Center Blvd.  
Suisun City, CA 94585

City of Vacaville  
Attn: Fire Chief  
City of Vacaville Fire Department  
650 Merchant Street  
Vacaville, CA 95688

City of Vallejo  
Attn: Fire Chief  
Vallejo Fire Department  
555 Santa Clara Street  
Vallejo, CA 94590

**K. CHOICE OF LAW**

The laws of the State of California shall govern the validity, enforceability or interpretation of this Agreement. Solano County shall be the venue for any action or proceeding, in law or in equity.

**L. DISPUTE RESOLUTION**

The Parties agree to meet and confer in good faith to resolve any disputes that may arise. If such attempt at resolution fails, the Parties agree to submit the matter to non-binding mediation within ninety (90) days thereafter, during which time the applicable statute of limitations shall be deemed tolled.

**M. ENTIRE AGREEMENT**

1. This Agreement supersedes all prior agreements made or entered into between the Parties.
2. This Agreement, including any exhibits referenced, constitutes the entire agreement between the parties and there are no inducements, promises, terms, conditions or obligations made or entered into by the Parties other than those contained in it.

**N. SEVERABILITY**

In the event that any portion of this Agreement is declared invalid, the Parties agree that such finding shall not invalidate the Agreement in its entirety and that the remainder of the Agreement will remain binding upon the Parties.

**O. WAIVER**

Waiver by any Party of any breach, default or condition precedent shall not constitute a continuing waiver or a waiver of any other subsequent breach, default or condition precedent or any other right hereunder.

**P. AMBIGUITY**

This Agreement and each of its provisions have been jointly drafted by the Parties and no Party shall be deemed to have been the drafting party and no ambiguity shall be presumed to be construed against any Party.

**Q. SUCCESSORS**

This Agreement shall be binding upon and shall inure to the benefits of the successors of the Parties, respectively. None of the Parties may assign any right or obligation hereunder without the written consent of the other Parties.

**R. HEADINGS**

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**S. PLURAL AND SINGULAR**

Whenever required by the context of this Agreement, the singular shall include the plural and vice versa.

**T. COUNTERPARTS**

This Agreement may be executed on behalf of the Parties in one or more counterparts all of which collectively shall constitute one document and agreement.

IN WITNESS WHEREOF, each Party has executed approval of this Agreement on the day and year shown below the name of each Party and filed its resolution of approval by its governing board with the Clerk of the County of Solano and signatures are listed below or attached hereto.

COUNTY OF SOLANO,  
a Political subdivision of the State

By: [Signature]  
Michael D. Johnson  
County Administrator

Dated: 8-7-07

APPROVED AS TO FORM:

By: [Signature]  
Steven M. Ingram  
Deputy County Counsel

Dated: 7/25/07

CITY OF BENICIA,  
a Municipal Corporation

By: [Signature]  
Title: City Manager  
Dated: 10/11/07

APPROVED AS TO FORM:

By: [Signature]  
Title: City Attorney  
Dated: 10-12-07

CITY OF FAIRFIELD,  
a Municipal Corporation

By: [Signature] <sup>MES</sup>  
Title: Asst. City Atty.  
Dated: 9/19/07

APPROVED AS TO FORM:

By: [Signature] <sup>MES</sup>  
Title: Kevin O'Rourke  
City Manager  
Dated: 9/20/07

CITY OF RIO VISTA,  
a Municipal Corporation

By: [Signature]  
Title: City Manager  
Dated: 10/1/07

APPROVED AS TO FORM:

By: [Signature]  
Title: City Atty  
Dated: 10/4/07

SUISUN CITY,  
a Municipal Corporation

By: [Signature]  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

APPROVED AS TO FORM:

By: [Signature]  
Title: City Attorney  
Dated: 9/17/07

CITY OF VACAVILLE,  
a Municipal Corporation

By: [Signature]  
Title: City Manager  
Dated: 9-24-07

APPROVED AS TO FORM:

By: [Signature]  
Title: ACA  
Dated: 9/24/07

CITY OF VALLEJO,  
a Municipal Corporation

By: [Signature]  
Joseph M. Tanner  
City Manager

APPROVED AS TO FORM:

[Signature]  
Frederick G. Soley  
City Attorney

Dated: 11/8/07

ATTEST: [Signature]  
Mary Ellsworth  
City Clerk

APPROVED AS TO CONTENT:

[Signature]  
Russell S. Sherman  
Fire Chief

APPROVED AS TO INSURANCE REQUIREMENTS:

[Signature]  
Harry B. Maurer  
Risk Manager