
AGREEMENT

BETWEEN THE COUNTY OF SAN MATEO AND BELMONT-SAN CARLOS FIRE DEPARTMENT

THIS AGREEMENT, entered into this ____ day of _____, 2007, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and BELMONT-SAN CARLOS FIRE DEPARTMENT, hereinafter called "Department";

WITNESSETH:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Department be retained for the purpose of hazardous materials emergency response services for the County of San Mateo.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. EXHIBITS AND ATTACHMENTS

The following exhibits and attachments are included hereto and incorporated by reference herein:

- Exhibit A - Services
- Exhibit B - Payments and rates

2. SERVICES TO BE PERFORMED BY DEPARTMENT

In consideration of the payments set forth herein and in Exhibit "B," Department shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. PAYMENTS

In consideration of the services provided by Department in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Department based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed **ONE MILLION, FOUR HUNDRED THIRTY THOUSAND, THREE HUNDRED EIGHTY-THREE DOLLARS (\$1,430,383).**

4. TERM AND TERMINATION

Subject to compliance with all terms and conditions, the term of this Agreement shall be from JULY 1, 2007 through JUNE 30, 2010.

Subject to the exception set forth in section 5, below, this Agreement may be terminated by Department, the Sheriff or the Sheriff's designee at any time without a requirement of good cause upon six months (180) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Department under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Department may make and retain a copy of such materials.

Provided that Department continues to perform work under this Agreement in a manner satisfactory to County of San Mateo, which determination shall be made by the County Director of County Health Services and the San Mateo County Sheriff, if the County issues the six months notice of termination, County shall pay Department the final two quarters of payments as set forth in Schedule "B". Said payment shall be pro-rated by day, respectively, in the event the actual termination period is either shorter, or longer, than the specified six-month termination period.

5. AVAILABILITY OF FUNDS

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits, based specifically and only upon unavailability of Federal, State, or County funds, by providing Ninety Days (90 days) written notice to Department as soon as is reasonably possible after the county learns of said unavailability of funding.

6. RELATIONSHIP OF PARTIES

Department agrees and understands that the work/services performed under this Agreement are performed as an independent Department and not as an employee of the County and that Department acquires none of the rights, privileges, powers, or advantages of County employees.

7. HOLD HARMLESS

- A. Department shall indemnify and hold harmless County from and against all actions which in any way arise out of, result from, or are connected in any way with Department's negligent or intentional acts in performing services under this agreement, except any action which arises solely and exclusively out of the negligent or intentional acts of County.
- B. County shall indemnify and hold harmless Department from and against any and all actions which in any way arise out of, result from, or are connected in any way with the County's negligent or intentional acts in performing services under this agreement, except any action which arises solely and exclusively out of the negligent or intentional acts of Department.
- C. If an action arises out of the concurrent negligence of Department and County, then liability for any damage in that action shall be apportioned between Department and County in accordance with the California law of comparative negligence.
- D. As used in this section, "County" means the County, its officers, agents, employees and servants.
- E. As used in this section, "Department" means the Department, its officers, agents, employees and servants.

- F. As used in this section, "actions" means actions, claims, suits, demands, and liability of every name, kind, and description brought for, or on account of injuries to or death of any person, including Department and County, or damage to property of any kind whatsoever and to whomsoever belonging.
- G. The duty of Department and County to indemnify and hold harmless, as set forth herein shall include the duty to defend as set forth in Civil Code Section 2778.

8. ASSIGNABILITY AND SUBCONTRACTING

Neither party may assign the benefits nor delegate the duties set forth in this Agreement, without prior written approval of both parties.

9. INSURANCE

The Department shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Department shall use diligence to obtain such insurance and to obtain such approval. The Department shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Department's coverage to include the contractual liability assumed by the Department pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

- A. Worker's Compensation and Employer's Liability Insurance. Both parties shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance, or an acceptable program of self-insurance providing full statutory coverage. In signing this Agreement, parties certify, as required by Section 1861 of the California Labor Code, that they are aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and parties will comply with such provisions before commencing the performance of the work of this Agreement.
- B. Liability Insurance. Both parties shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Department's and County's operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

1) Comprehensive General Liability.....	<u>\$2,500,000</u>
2) Motor Vehicle Liability Insurance.....	<u>\$1,000,000</u>
3) Professional Liability.....	<u>\$1,000,000</u>

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. COMPLIANCE WITH LAWS; PAYMENT OF PERMITS/LICENSES

All services to be performed pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws. In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

11. NON-DISCRIMINATION AND OTHER REQUIREMENTS

No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

Department and County shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Department's and County's equal employment policies shall be made available to either party upon request.

12. COMPLIANCE WITH EMPLOYEE JURY SERVICE ORDINANCE

Department shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Department, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employee's deposit any fees received for such jury service with the Department or that the Department deduct from the employees regular pay the fees received for jury service.

13. RETENTION OF RECORDS, RIGHT TO MONITOR AND AUDIT

Each party agrees to provide to the other party, to any federal or state department having monitoring or reviewing authority, to County's or Department's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules, and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

Department and County shall maintain and preserve all financial records relating to this Agreement for a period of four (4) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater.

14. MERGER CLAUSE

This Agreement, including the Exhibit hereto constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. CONTROLLING LAW

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

16. NOTICES

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

In the case of County, to:

San Mateo County Sheriff's Office
Attn: Undersheriff Carlos Bolanos
400 County Center
Redwood City, CA 94063

In the case of Department, to:

Belmont-San Carlos Fire Department
Attn: Chief Doug Fry
600 Elm Street
San Carlos, CA 94070

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

*A Political Sub-division of the
State of California*

By: _____
PRESIDENT, BOARD OF SUPERVISORS

Date: _____

ATTEST:

By: _____
CLERK OF SAID BOARD

BELMONT-SAN CARLOS FIRE DEPARTMENT

By: Warren Lieberman
(SIGNATURE)

WARREN LIEBERMAN
(PRINTED NAME)

Date: 6/5/2007

EXHIBIT A SERVICES

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND BELMONT-SAN CARLOS FIRE DEPARTMENT

In consideration of the payments set forth in Exhibit B, Department shall provide the following services:

1. DESCRIPTION OF SERVICES TO BE PROVIDED BY DEPARTMENT.

The services provided under this agreement are as follows:

- Delineation of the responsibilities, cost reimbursements, terms, and administrative processes, related to responding to incidents involving hazardous materials ("hazmat").
- Specification of the role of the Countywide Emergency Services Council in responding to incidents involving hazardous materials ("hazmat")
- Specification of the administrative duties of the Battalion Chief as described herein.
- Department shall staff the Countywide Emergency Services Joint Powers Authority's (CES-JPA) County-wide Hazardous Materials Incident Response Team ('Team') and shall respond to all "hazmat" emergencies as requested by the cities participating in the CES-JPA.
- Department shall provide all firefighter personnel necessary to staff the Team. In the event of a hazardous materials incident, the Team shall be dispatched to, and will promptly assess, respond, and mitigate the incident. This may necessitate the wearing of protective equipment; use of specialized detection and mitigation tools, equipment, and supplies; entry into potentially contaminated sites; clean-up and re-packaging of hazardous materials; establishment of a hazardous materials incident command post; coordination with responding County Environmental Health Hazardous Materials Specialists; consultation with other responding public safety personnel, other city/county officials; and with appropriate dispatch personnel; decontamination of victims and Team members; and cordoning off affected areas and sites with direction/assistance to local public safety personnel.
- Department shall house and protect JPA Hazardous Materials Response vehicle(s) and specialized hazmat response equipment and supplies, and shall maintain an accurate inventory of all JPA-owned hazmat vehicles, equipment and supplies, and supply same to the County Office of Emergency Services on a designated schedule, not more often than quarterly.
- Department's Fire Chief, or in his absence, hazmat team Battalion Chief shall participate in Emergency Services Council meetings and activities, as a working staff member with duties as assigned, similar to other staff including the Sheriff's Office of Emergency Services, and the County Environmental Health Hazardous Materials Program Supervisor.

2. ADMINISTRATIVE DUTIES OF HAZMAT BATTALION CHIEF.

Subject to the Sheriff's approval, which shall not be unreasonably withheld, Department shall employ and designate a Hazmat Battalion Chief to perform the duties specified herein. The Battalion Chief's qualifications and duties shall be as follows:

A. Qualifications.

- Be a full time employed Battalion Chief with the Belmont/San Carlos Fire Department.
- Possess a Hazmat Specialist Certification.
- Have the ability to work within the parameters set forth by the Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS).

B. Duties.

1) Emergency Response.

The Administrative Battalion Chief shall respond to all calls for hazmat response service which occur annually during the assigned Hazmat Battalion Chief's duty shift - includes response to emergencies and incident management of scene. In the event of calls for hazmat response which are received when the Administrative Battalion Chief is not on Duty, Department's remaining two shift Battalion Chiefs will respond to all hazmat calls received during their respective shifts.

The Administrative Battalion Chief shall be available for consultation to Department's other two Battalion Chiefs for specialized handling and response questions and concerns that may arise in response to significant hazmat incidents.

2) Manage Team Equipment & Gear.

- Manage hazmat team equipment needs and plan future/replacement needs.
- Develop and provide specifications for all hazmat specialized equipment.
- Order approved capital equipment; take possession of said equipment and perform all activities required to bring new equipment to a state of readiness.
- Inventory and order tools, specialized clothing/gear and small equipment for team as needed.
- Assess and manage maintenance requirements for all existing team equipment, clothing and gear.
- Organize multi-agency attendance for equipment demonstrations.
- Stay current with new developments, equipment, products and services as relate to hazmat response operations.

3) Ongoing Management.

- Manage requests from team members to replace and upgrade equipment.
- Manage daily activities as they relate to hazmat operations (staffing, training, purchases, maintenance, etc.).
- Coordinate annual physical examinations of team members.
- Assist in recruitment and provide orientation for new team members.
- Plan for hazmat team meetings; establish agenda, schedule and chair team meetings.
- Stay current with statutory changes, new legislation or technical requirements as relate to hazmat operations in San Mateo County / Statewide.

4) Liaison Duties.

- Serve as primary liaison with County Environmental Health Hazardous

Materials Unit Supervisor.

- Serve as South County Fire Authority staff member for Countywide Emergency Services Council activities.
- Attend meetings as required, and respond to requests for information or brief reports related to hazmat team activities.
- Serve as liaison with Fire Authority management and communicate important policy, budget, projects, or other information originating from the Emergency Services Council promptly to authority management.
- Assist in researching, developing and preparing annual hazmat operating budget and any requested capital equipment budget per Schedule B.
- Attend meetings and assist in presenting annual budget to the Emergency Services Administrative Committee and Council.
- Assist in communicating and resolving any billing or other contractual issues, in coordination with County Environmental Health and/or the Emergency Services Council financial manager.
- Serve as liaison to, and attend meeting as required, with San Mateo County Bomb Squad, SWAT Team, and Public Safety Dispatch Services.
- Attend meetings as directed by Authority management, to address hazmat issues, with the San Mateo County Fire Chief's Association.

5) Training.

- Manage and coordinate all hazmat-related team training activities.
- Establish contacts/plan for in-house training and contracts for outside professional training.
- Coordinate IEC – refresher training; Military, Coast Guard, San Francisco Airport, and other training programs.
- Ensure team compliance with legal training requirements.

6) Special Events.

- Receive and manage annual requests for hazmat-related special event functions including:
 - “show-and-tell” demonstrations, training sessions, public education events, school events, etc.
 - Assist Emergency Services Council staff in coordination of fire & hazmat participation in the annual County Emergency Preparedness Day.

3. DESCRIPTION OF SERVICES TO BE PROVIDED BY COUNTY.

- County shall provide the following direct services to Team:
 - Use of equipped hazardous materials response vehicle and OES command vehicle(s), with a sinking fund established for periodic replacement of said vehicles.
 - Routine vehicle maintenance that will keep said vehicles available for emergency response.
 - Support for medical monitoring program for up to 24 members, through the JPA contractual budget.
 - Employee training in hazmat site management; hazmat identification; contamination sources & mitigation; personal protection, decontamination, &

clean-up procedures; equipment usage & diagnostic procedures; and other identified specialized training which County OES and Department shall mutually agree is necessary and desirable.

- On-call County Environmental Health Hazmat Specialist response and diagnostic/handling consultation.
- County shall provide a designated contract administrator for this Agreement, who shall be the assigned Sheriff's Lieutenant responsible for the Office of Emergency Services, with additional Sheriff's Office contract oversight, budgetary support and consultation to Department, for the processes set forth in Schedule B.

EXHIBIT B

PAYMENTS & RATES

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND BELMONT-SAN CARLOS FIRE DEPARTMENT

In consideration of the services provided by Department in Schedule A as set forth in this Amendment, County shall determine the annual compensation, and make payments to Department, through the process and in the manner hereby established below:

1. AMOUNT AND RATE OF PAYMENT.

- A. The total amount of payment to Department for Fiscal Year 2007-08, covering the period of July 1st, 2007 through June 30, 2008, shall be Four Hundred Fifty-Three Thousand, Seven Hundred & Thirty Dollars (\$453,730), which shall be payable in four quarterly installments pursuant to Section 2 – D of this Exhibit, in the amounts of \$113,432.50 each.
- B. The total amount of payment to Department for Fiscal Year 2008-09, covering the period of July 1st, 2008 through June 30, 2009, shall be determined through the annual Emergency Services Budget Process, and shall represent a percentage increase over the FY 2007-08 budget corresponding to the negotiated base salary increase in the Belmont-San Carlos Firefighters MOU effective January, 2008, but in no event shall exceed an increase of Five Percent (5%), nor a dollar total of \$476,416, which shall be payable in four quarterly installments pursuant to Section 2 – D of this Exhibit, in equal 25% amounts of the determined annual total payment, but not to exceed \$119,104.00 per quarter.
- C. The total amount of payment to Department for Fiscal Year 2009-10, covering the period of July 1st, 2009 through June 30, 2010, shall be determined through the annual Emergency Services Budget Process, and shall represent a percentage increase over the FY 2007-08 budget corresponding to the negotiated base salary increase in the Belmont-San Carlos Firefighters MOU effective January, 2009, but in no event shall exceed an increase of Five Percent (5%), nor a dollar total of \$500,236, which shall be payable in four quarterly installments pursuant to Article 5 of Section 2-B of this Exhibit, in equal 25% amounts of the determined annual total payment, but not to exceed \$125,059.00 per quarter.
- D. The Maximum Total Payment to Department under this Agreement, for all three Fiscal Years of the term of this Agreement, shall not, in any event, exceed One Million, Four Hundred Thirty Thousand, Three Hundred Eighty-Three Dollars (\$1,430,383).

2. METHOD OF DETERMINING PAYMENT IN SECOND AND SUBSEQUENT YEARS OF CONTRACT TERM.

- A. The process for establishing the annual compensation to Department for hazardous materials emergency response (hereinafter referred to as "hazmat") under this Agreement shall be through the existing budgetary process for the County Emergency Services Council Joint Powers Authority.
- B. Upon notification by staff of the Emergency Services Council, which shall be in the fiscal period prior to commencement of the new fiscal year on July 1st, Department shall submit an annual operating budget for the Belmont-San Carlos Fire Department which shall include the following components:
1. An Annual Operating Budget which shall include the following:
 - Firefighter hazmat assignment shift differential costs for 24 firefighters;
 - The apportioned share of total employee benefit costs which is attributable to the additional hazmat shift differential;
 - The risk assessment cost for Worker's Compensation and General Liability Insurance, for Department's operation of the hazmat team;
 - Direct annual costs for mandated physical fitness examinations;
 - Direct costs for hazmat training and training-related travel for firefighters serving on the hazmat team;
 - Direct costs for services and supplies related to operation of the hazmat team;
 - An allocation of Department's administrative costs for operation of the hazmat team, including Department's assigned battalion chief's hazmat administrative and supervisory duties, as set forth in Schedule "A";
 2. Proposed Capital Outlay Budget replacement items of capital equipment for the upcoming fiscal year.
 3. A Budget Narrative which shall:
 - Provide a brief narrative description of Department's services for inclusion in the Emergency Services Council proposed budget;
 - Identify and discuss changes from the current year approved budget; and
 - Provide key hazmat workload statistics and performance measure information as determined in consultation with Emergency Services Council staff.
 4. Department shall submit above budget items promptly in accordance with deadlines transmitted by Emergency Services Council staff. The Emergency Services Council is the final approval authority for the Hazardous Materials Emergency Response budget.
 5. Upon approval of the Emergency Services Council budget, Department shall submit invoices on a quarterly basis, for an amount equal to one quarter (25%) of the approved annual budget per invoice. Invoices shall be submitted the last month of each quarter. County shall pay Department thirty (30) days of receipt of Department's invoice.
 6. Extraordinary Events – should Department encounter excessive expenses in any

quarter during the performance of duties under this contract which are the result of extraordinary events, Department should immediately or as soon as possible in an emergency situation, notify County in writing of the circumstances and nature of the costs, even if full accounting for said costs must necessarily follow at a later date.

- “Extraordinary events” as used herein are defined as a hazmat response resulting from a catastrophic event such as a major natural disaster, act of terrorism, major epidemic or pandemic disease outbreak as declared by the County Public Health Director, catastrophic accident, industrial incident and other event involving the creation and/or release of large and potentially lethal or very injurious quantities of hazardous materials. Major hazmat incident responses, however significant, which remain localized and containable within a team work shift and do not result from nor create a potentially catastrophic situation, are not considered extraordinary events for purposes of this Agreement.
- In the event of a perceived or potential major hazmat event, an Incident Working Group shall make a decision as to whether the trigger event is determined be an “extraordinary event.” Said Incident Working Group shall consist of the County Environmental Health Hazmat Program Supervisor; the OES Director; Department’s Hazmat Battalion Chief; the Fire Chief of the impacted Department or unincorporated area or designated on-site fire incident commander; and the County Contract Administrator for this agreement, or temporary designee.
- The working group as defined above shall have the authority, in the event they determine that an incident is an “extraordinary event”, to authorize the incurring of extraordinary response expenses as necessary to address the incident, up to a period of 24 hours. Said expenses may be over and beyond the standard level of reimbursement established under this Agreement. As soon as is practical, and prior to the conclusion of the initial 24-hour response period, the appropriate County, City, and OES managers, or designees, shall be notified, and any determination as to the need for further activities beyond the initial maximum 24-hour period established by the Incident Working Group, including incurring of further extraordinary expenses by Department, shall be mutually determined by said managers, in such consultative manner as they deem appropriate for the incident.
- Should an extraordinary event occur, Department will, as soon as is possible and practical, document the excess expenses which have been incurred. County agrees to conference in good faith with Department at the earliest practical opportunity, for the purpose of mutually reviewing expenses and determining the most expeditious process for reimbursement of Department’s documented expenses. It is understood by the parties that in such event, the Emergency Services Council will need to be promptly notified and must approve the amount and method of reimbursement.
- Any other emergent costs or reimbursement requests, including resolution of any prior-year issues, which are related to this Agreement, must be reviewed and mutually agreed upon by all parties, to wit: County, Department, and the Emergency Services Council, and documented by way of a Side Letter signed by all parties.