

MEMORANDUM OF UNDERSTANDING BETWEEN

THE COUNTY OF KINGS

THE COUNTY OF TULARE

CITY OF DINUBA

CITY OF EXETER

CITY OF FARMERSVILLE

CITY OF HANFORD

CITY OF LEMOORE

CITY OF LINDSAY

CITY OF PORTERVILLE

CITY OF TULARE

CITY OF VISALIA

CITY OF WOODLAKE

FOR THE

TULARE-KINGS COUNTY REGIONAL
HAZARDOUS MATERIALS TEAM

INTRODUCTION

This Memorandum of Understanding ("MOU" or "Agreement") is entered into between Kings County, Tulare County, City of Dinuba, City of Exeter, City of Farmersville, City of Hanford, City of Lemoore, City of Lindsay, City of Porterville, City of Tulare, City of Visalia, and City of Woodlake (jointly referred to as "Parties"). The MOU is for the purpose of entering into a cooperative agreement between the agencies listed above to provide technical services at the scene of a hazardous materials incident within the operational areas of the participating agencies within Tulare County and Kings County. The agencies signing this Agreement have determined that a multi-agency regional team provides an efficient and cost-effective method to provide such services under the terms of this MOU.

By commitment of resources as described in this MOU, the agencies will develop the Tulare-Kings County Regional Hazardous Materials Team, ("Haz-Mat Team") which will serve to provide for response to incidents involving hazardous materials to the best of the participating agencies' collective abilities and capabilities. The Haz-Mat Team will be a resource that is on-call when needed for the participating agencies, if resources are available, and will not circumvent the requesting agency's statutory authority.

The City of Visalia, through the City of Visalia Fire Department ("VFD") will serve as the lead agency for the Haz-Mat Team. As the lead agency the VFD will be primarily responsible for housing the Haz-Mat Team equipment, schedule training on a regional basis, accounting for the Haz-Mat Team funding, cost recovery efforts as specified in this Agreement, assembling and scheduling the available personnel for each Haz-Mat Team response.

1. PURPOSE

This Agreement is to create and maintain a regional hazardous materials response team, as a supplement to existing mutual aid agreements, that will be composed of staff from participating agencies, as available, to provide first responder operational and technical services at the scene of hazardous materials incidents within the jurisdictional areas of the Parties.

To the extent that the Parties previously operated under cost sharing agreements with the City of Visalia for hazardous materials response, this agreement is intended to replace those prior cost sharing agreements.

2. NO SEPARATE ENTITY

The Parties agree that the purpose of this Agreement may be accomplished without creating a separate entity from the Parties. The Parties to this Agreement are hereby expressly stating that this Agreement does not and is not intended to create a separate joint powers agency or any other type of entity separate and apart from the Parties to this Agreement.

Parties agree that the employees of each respective participating local agency remain the employees of that participating local agency and this Agreement does not make the Parties responsible in any way for the employees of another participating local agency.

3. DUTIES OF PARTIES

The Parties to this Agreement hereby agree that each will undertake the following duties and responsibilities:

- A. Each Party shall take steps, to the extent its resources permit, to train and certify at least one person qualified to provide Hazardous Materials Technician services or four persons qualified to provide First Responder Operational decontamination services.
- B. Each Party, may, at its discretion, acquire and maintain material and supplies necessary to provide equipment and support Haz-Mat Team operations.
- C. Each Party shall contribute funds, or materials, as specified in Exhibit A to this Agreement in order to financially support the costs associated with equipping and maintaining the Haz-Mat Team. Each Party shall pay its required share on or before October 1, of each year, either in a lump sum or in a payment schedule arranged with the lead agency. Failure to pay shall be considered a breach of this Agreement.
- D. This Agreement is intended to state an agreement by participating agencies to cooperate in responding to hazardous materials incidents but each Party acknowledges that this Agreement does not negate or alter its obligation to respond to any such incident occurring within its jurisdictional boundaries.
- E. At the sole discretion of each participating agency, a Party under this Agreement may request the Haz-Mat Team respond to the scene of a hazardous material incident within the participating agency's jurisdiction.
- F. Under the direction of the jurisdiction having legal scene management authority and responsibility, the Haz-Mat Team shall have control of all matters pertaining to the containment and decontamination of a hazardous materials incident until relieved of responsibility by the requesting Party or by the legal scene manager.
- G. VFD as the designated lead agency, shall, at its discretion and based on operational requirements, request Parties send trained personnel as part of a Haz-Mat Team response. Parties shall not be required to respond to a request for resources if it does not have sufficient personnel or equipment to respond at the time the request is made.

- H. Except as agreed to under this Agreement, each Party agrees to be solely responsible for the costs of their personnel, resources administration, training, and emergency response within its respective jurisdiction.
- I. Parties agree that if the Haz-Mat Team responds to a jurisdiction that is not a Party to this Agreement, then the VFD, as the agent for the Haz-Mat Team, shall bill that jurisdiction the applicable cost recovery for the Haz-Mat Team response. Cost recovery to local agencies may be offset by any amount collected from the party responsible for causing the hazardous material incident, if any, under available statutory law for cost recovery. Cost recovery among Parties with personnel on the responding Haz-Mat Team will be based on the applicable cost rate for the respective personnel involved.

4. INDEMNIFICATION

The Parties to this Agreement recognize the statutory immunities stated in Government Code Sections 850 et seq., Health and Safety Code Section 25400 and 42 U.S.C. Section 9607(d)(2) from liability, claims, actions, costs damages or losses, including death or injury to any person and/or damage to property to each other and third parties for personal injury, including death, and property damage arising out of acts or omissions, including the active or passive negligence, which may occur while the respective departments of the Parties take action in response to hazardous material incidents under this Agreement. These immunities, or any other governmental immunity, that do not extend to liability for personal injury, including death, and property damage arising out of any act or omission of any party to this Agreement which act or omission is performed in a grossly negligent manner or to liability for any injury or damage which is a result of bad faith, gross negligence or intentional misconduct, as those terms are defined or used under the statutory immunities cited above are referred to herein as "gross negligence or intentional misconduct."

When the statutory liability immunities cited above apply there shall be no obligation by any Party to this Agreement to indemnify any other Party pursuant to this section of the Agreement.

Where any liability, claims, actions costs, damages or losses of any kind, including death or injury to any person and/or damage to property, (referred to as "claims" herein) are asserted by any third party or Party to this Agreement to have arisen out of any action or omission of a Party to this agreement which act or omission is or alleged to have been gross negligence or intentional misconduct by such Party, the Party or Parties whose actions which are alleged to have been gross negligence or intentional misconduct shall hold harmless, defend and indemnify the other Parties to this Agreement from and against any liability, claims actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property alleged to have arisen out of gross negligence or intentional misconduct. This indemnification shall include claims or any such liability assignable to the indemnified Parties on the theory or basis of respondeat superior or agency. This indemnification obligation shall continue beyond the term of this Agreement

as to any acts or omissions occurring under this Agreement or any extension of this Agreement. Parties agree that if proportional liability is determined for incidents described in this paragraph, then each shall bear its proportionate cost of any claims respectively attributable based on the applicable facts and circumstances. Parties shall indemnify/hold harmless other Parties that may have been named or involved in the action for any costs or damages incurred in this paragraph its respective proportionate liability.

To the extent that the paragraphs above do not apply to any claims that any third party or entity asserts to have arisen out of the activities or omissions, including active or passive negligence, of a Party whose employees or equipment were included in a response by the Haz-Mat Team under this Agreement, then the Party that has jurisdiction over the location of the incident and that requests the Haz-Mat Team shall hold harmless, assume the defense of, and indemnify the other Parties to this Agreement from and against such claims. This indemnification shall include claims or any such liability assignable to the indemnification parties on the theory or basis of respondeat superior or agency. This indemnification obligation shall continue beyond the term of the Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

In any instance where claims name multiple Parties, then the Party with the majority of the employees in the Haz-Mat Team that responded to the incident shall assume the lead in defense unless otherwise agreed to by the Parties.

Each Party shall notify the other participating agencies in writing of any claims, administrative actions, or legal actions with respect to any of the matters described in this indemnification provision within five (5) business days of becoming aware of a claim or action. The Parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this Agreement. Nothing set forth in this Agreement shall establish a standard of care for, or create any legal rights in, any person not a party to this Agreement.

The provisions of this indemnification clause are intended to be interpreted as broadly as permitted by applicable law. This provision shall survive the termination, expiration, or cancellation of this Agreement.

5. INSURANCE

It is understood and agreed that each Party does and shall maintain insurance policies or self-insurance programs to fund their respective potential liabilities, including potential liability arising out of their personnel responding to hazardous materials incidents and the ownership, maintenance, operation, and use of equipment or procedures used in responding to hazardous materials incidents. Each Party agrees that their respective insurance policies or self-insurance policies shall be modified as necessary to include reasonably foreseeable liability arising out of this Agreement.

Each Party is responsible for providing all required worker's compensation benefits and administering worker's compensation for its employees.

Each Party hereby grants to the other Parties and the other Parties' respective officers, officials, employees, and volunteers a waiver of any right to subrogation in regards to the activities referenced in this Agreement which any insurer of the waiving Party may acquire against the other Parties and/or other Parties' respective officers, officials, employees, and volunteers by virtue of the payment of any loss under insurance maintained by the waiving Party. Each Party shall obtain the endorsement(s) necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the waiving Party obtain and provides the required endorsement(s) to the other Parties.

6. COST RECOVERY AMONG PARTIES

Cost recovery fees will not be charged to Parties. The only type of cost recovery that will be undertaken when the Haz-Mat Team responds to an incident in the jurisdiction of a Party will be to seek reimbursement from those persons and entities responsible for the incident under applicable state or local laws permitting cost recovery. Participating Parties agree to cooperate with one another in cost recovery.

The City of Visalia shall coordinate and monitor cost recovery efforts. Each Party shall provide Visalia with the applicable cost recovery rates for its personnel that serve on the Haz-Mat Team. For purposes of cost recovery, the Parties shall designate City of Visalia, acting through the VFD, as their agent to seek cost recovery of personnel that responded as part of the Haz-Mat Team.

Within thirty days of a hazardous materials incident each Party shall provide VFD with a record of all costs of resources, personnel, and equipment, deployed to the hazardous materials incident.

City of Visalia, as the designated agent under this Agreement, shall collect through cost recovery efforts all amounts expended by the Parties under this Agreement. Each Party shall cooperate with VFD in collection efforts for incidents that occur within their respective jurisdictional boundaries. All cost recovery revenue shall be reimbursed to the Party that incurred the expense. All Parties agree to account for Haz-Mat Team expenses incurred by their respective agency in an account separate from other revenues and expenditures.

Parties agree that VFD, as the lead agency (and primary location for Haz-Mat Team equipment) shall establish an administrative per incident fee of \$300.00 that will be applied to reimburse VFD the administrative costs of assembling the specific personnel that will be responding to each specific hazardous material incident. This per incident fee will only apply when the VFD coordinates a response by the Haz-Mat to a request for assistance.

7. TERM

The initial term of this Agreement shall be for five years effective July 1, 2019 and ending June 30, 2024. The Parties may mutually agree to extend this Agreement for additional five-year terms.

8. TERMINATION

A Party to this Agreement may voluntarily terminate participation upon one hundred eighty (180) calendar days written notice to all other Parties.

Parties that are in breach of the terms of this Agreement shall be notified in writing and have ninety (90) calendar days from the date of such notice to comply with the terms of the Agreement or its participation will be terminated.

Upon the effective termination date, any required contributions under this Agreement that were paid in advance shall be prorated and potentially refunded based on the number of months during the applicable fiscal year that a Party is involved in this Agreement.

Notwithstanding a Party's withdrawal or termination, that Party may continue to receive cost recovery reimbursements as provided under this Agreement for costs incurred while the Party operated under this Agreement and provided personnel or equipment to a hazardous material incident prior to termination.

9. ADDITIONAL PARTIES

Parties agree that additional agencies may join this Agreement at any time. VFD shall notify the existing Parties in writing of any agencies that seek to be added to this Agreement. The notice by VFD shall include any draft cost adjustments to the contributory amounts required under this Agreement that will go into effect with the addition of the new Party. VFD shall reissue the section concerning notice and the revised schedule of costs based on the addition of a new Party and a copy of the signature page of the Agreement signed by the new Party. The additional agency shall be added as a Party to this Agreement unless an existing Party objects within thirty (30) calendar days of being notified of the addition. In case of an objection, all then-current Parties shall meet and decide by a majority vote of currently participating Parties whether to include the additional agency.

10. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the Parties. With the exception of Section 9, allowing additional agencies to participate, and Exhibit A, allowing population data to be changed as census data is updated and annual costs to increase by a set amount per year; no changes, modifications, or alternations, shall be effective unless in writing and signed by all Parties.

11. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

12. NOTICES

Any notice required to be given pursuant to this Agreement shall be in writing and sent first-class mail to the following addresses:

COUNTY OF KINGS

Clay Smith, Fire Chief
280 Campus Drive
Hanford, CA 93230

COUNTY OF TULARE

Tulare County Fire Department
835 S. Akers Street
Visalia, CA 93277

CITY OF DINUBA

Chad Thompson, Fire Chief
420 E. Tulare Street
Dinuba, CA 93230

CITY OF EXETER

Adam Ennis, City Administrator
100 N. C Street
Exeter, CA 93221

CITY OF FARMERSVILLE

City Manager
909 W. Visalia Road
Farmersville, CA 93223

CITY OF HANFORD

Eric Brotemarkle, Interim Fire Chief
350 W. Grangeville Avenue
Hanford, CA 93230

CITY OF LEMOORE

Fire Chief
711 W. Cinnamon Lane
Lemoore, CA 93245

CITY OF LINDSAY

Lindsay Department of Public Safety
185 N. Gale Hill Avenue
Lindsay, CA 93247

CITY OF TULARE

Luis Nevarez, Fire Chief
800 S. Blackstone Avenue
Tulare, CA 93230

CITY OF VISALIA

Dan Griswold, Fire Chief
420 N. Burke Street
Visalia, CA 93277

CITY OF WOODLAKE

Ramon Lara, City Administrator
350 N. Valencia Avenue
Woodlake, CA 93286

CITY OF PORTERVILLE

Dave LaPere, Fire Chief
40 W. Cleveland Avenue
Porterville, CA 93257

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officers. The signatories below are hereby affirming, under penalty of perjury, that they have the requisite authority from governing body of the agency they represent to sign this Agreement and bind the local agency that they represent to the terms of this Agreement.

[Signature pages follow]

COUNTY OF KINGS

By: *Joe Mores*
Chairperson, Board of Supervisors

ATTEST: **OCT 15 2019**

By: *Catherine Ventrella*
Clerk, Board of Supervisors

Approved as to Form

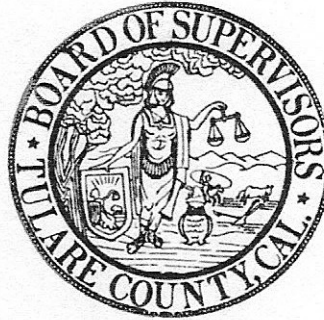
By: *Juliana F. Gmur*
County Counsel
*JULIANA F GMUR,
ASSISTANT COUNTY COUNSEL*

COUNTY OF TULARE

By: Thylu Cochran
Chairperson, Board of Supervisors

ATTEST: Jason T. Britt
County Administrative Officer /
Clerk, Board of Supervisors


By: Mercedes Lemos
Deputy Clerk, Board of Supervisors



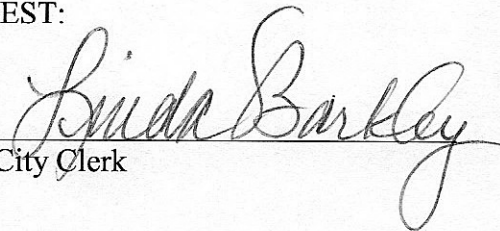
Approved as to Form

By: M. Garcia for JMS 11/4/19
County Counsel 20191689

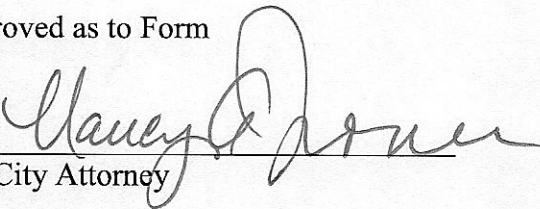
CITY OF DINUBA

By: 
City Manager


ATTEST:

By: 
City Clerk

Approved as to Form

By: 
City Attorney

CITY OF EXETER

By: 

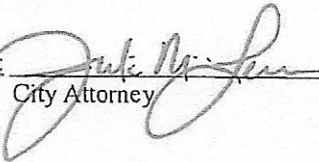
City Manager

ATTEST:

By: *Shonna Oneal*

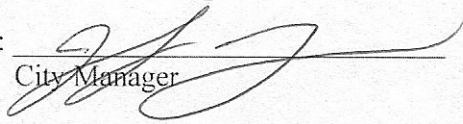
City Clerk

Approved as to Form

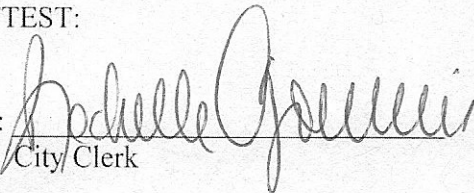
By: 

City Attorney

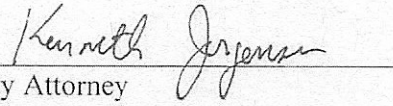
CITY OF FARMERSVILLE

By: 
City Manager

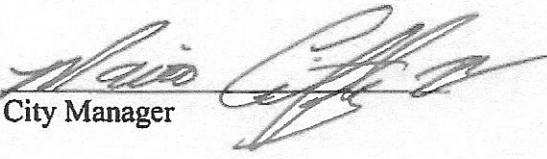
ATTEST:

By: 
City Clerk


Approved as to Form

By: 
City Attorney

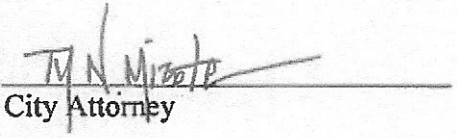
CITY OF HANFORD

By: 
City Manager

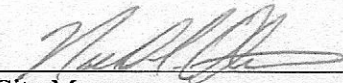
ATTEST:

By: 
City Clerk

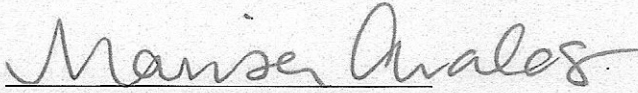
Approved as to Form

By: 
City Attorney


CITY OF LEMOORE

By: 
City Manager


ATTEST:

By: 
City Clerk

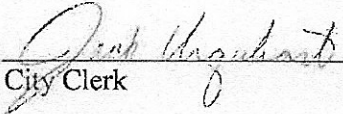
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By: 
City Attorney

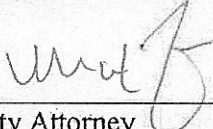
CITY OF LINDSAY

By: 
City Manager

ATTEST:

By: 
City Clerk

Approved as to Form

By: 
City Attorney

CITY OF TULARE

By: Rob A. Hunt
City Manager

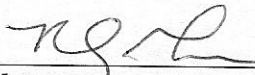
ATTEST:

By: [Signature]
City Clerk

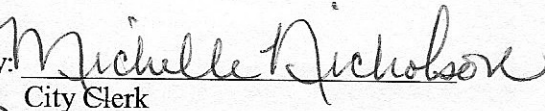
Approved as to Form

By: [Signature]
City Attorney

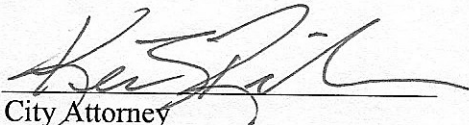
CITY OF VISALIA

By: 
City Manager

ATTEST:

By: 
Chief Deputy City Clerk

Approved as to Form

By: 
City Attorney

CITY OF WOODLAKE

By: [Signature]
City Administrator

ATTEST:

By: [Signature]
City Clerk




Approved as to Form

By: [Signature]
City Attorney

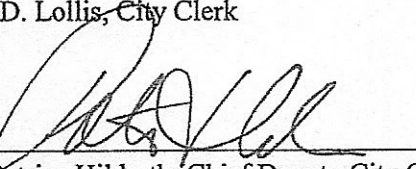
Tulare-Kings County Regional Hazardous Materials Team MOU

CITY OF PORTERVILLE

By: 
Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

By: 
Patrice Hildreth, Chief Deputy City Clerk

Approved as to Form

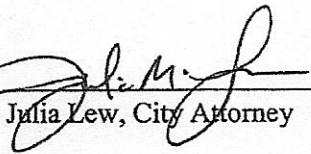
By: 
Julia Lew, City Attorney

Exhibit A
Cost sHARE Responsibility

The Parties agree that each agency shall be responsible for its respective share of costs to equip and maintain on an annual basis the Haz-Mat Team.

The Parties, by this Agreement have agreed that on an annual basis the Haz-Mat Team should be funded \$72,562.22, which amount shall increase annually at a rate of two percent (2%) unless a different amount is agreed upon in writing by all the Parties to this Agreement.

The Parties agree that their share of the annual cost share shall be based on the respective populations of each jurisdiction compared to the total overall population of all participating jurisdictions. As census data is updated then the Parties agree to update this section of this Agreement based on the most recent census data.

In consideration of the City of Hanford transferring ownership of the 2007 Pierce Hazardous Materials Unit to the City of Visalia for use by the Haz-Mat Team, the Parties agree that Hanford shall be credited as contributing \$100,240 or ten (10) years of payments, whichever occurs first. The City of Hanford annual contribution shall be first subtracted from this amount before any additional amounts are owed. VFD shall adopt an applicable cost recovery rate for this vehicle that shall be applied to cost recovery charges for the VFD as it will have the responsibility to maintain and operate the unit on behalf of the Haz-Mat Team. In case the City of Hanford terminates this Agreement prior to this credit ending, then the City of Visalia shall either return the 2007 Pierce Hazardous Materials Unit or pay the City of Hanford the outstanding balance of the credit listed in this paragraph to retain the vehicle.

Agency	Population	Percentage	Cost Share
Tulare County Fire Department	144,741	22.9%	\$16,596.65
Dinuba Fire Department	25,328	4.0%	\$2,904.22
Exeter Fire Department	11,002	1.7%	\$1,261.54
Farmersville Fire Department	11,358	1.8%	\$1,302.36
Hanford Fire Department	58,105	9.2%	\$6,662.58
Kings County Fire Department	69,348	11.0%	\$7,951.75
Lemoore Fire Department	26,257	4.1%	\$3,010.75
Visalia Fire Department	138,207	21.8%	\$15,847.44
Woodlake Fire Department	7,891	1.2%	\$904.82
Porterville Fire Department	60,260	9.5%	\$6,909.68
Lindsay Fire Department	13,358	2.1%	\$1,531.69
Tulare Fire Department	66,967	10.6%	\$7,678.74
TOTAL	632,822	100.0%	\$72,562.22

* Note that if a city decides not to participate and terminates this agreement then they will be removed from the participating list and cause the applicable cost share of participating agencies to increase. If additional cities agree to participate, then the total population and corresponding share of costs will decrease.