

---

# AGREEMENT

## BETWEEN THE COUNTY OF SAN MATEO AND BELMONT FIRE PROTECTION DISTRICT

---

THIS AGREEMENT, entered into this day \_\_\_\_\_ of \_\_\_\_\_, 2013, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and BELMONT FIRE PROTECTION DISTRICT, hereinafter called "District"

### **RECITALS**

**WHEREAS**, Government Code Section 54981 and Health and Safety Code Section 13862(d) authorizes the County to contract with District for performance by the District of municipal functions such as firefighter hazardous materials emergency response, within the territory of the County; and

**WHEREAS**, it is necessary and desirable that District be retained for the purpose of providing hazardous materials emergency response function for the County.

### ***NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:***

#### **1. EXHIBITS AND ATTACHMENTS**

The following exhibits and attachments are incorporated by reference:

- Exhibit A - Services
- Exhibit B - Payments & Rates

#### **2. SERVICES TO BE PERFORMED BY DISTRICT**

District shall perform municipal functions for County in accordance with the terms, conditions and specifications set forth in Exhibit "A."

#### **3. PAYMENTS**

In consideration of performance by District in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment in advance to District in accordance with Health and Safety Code Section 13878 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 FIVE HUNDRED FIFTY SIX THOUSAND FOUR HUNDRED SEVENTY SIX DOLLARS AND ZERO CENTS (\$1,556,476.00)

#### **4. TERM AND TERMINATION**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from JULY 1, 2013 through JUNE 30, 2016.

This Agreement may be terminated by District, the Sheriff or the Sheriff's designee at any time without a requirement of good cause upon two months (60 days) written notice to the other party.

In the event of termination, copies of all finished or unfinished documents, data, studies, maps, photographs, reports, and materials(hereafter referred to as materials) prepared by District for the County under this Agreement shall become the property of the County and the copies shall be promptly delivered to the County. Upon termination, the District will retain the originals of the materials. The County will also be granted a non-exclusive, but perpetual and unrevokable right to copy and use the materials.

**5. RELATIONSHIP OF PARTIES**

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

**6. HOLD HARMLESS**

- A. District 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 District'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 District 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 District.
- C. If an action arises out of the concurrent negligence of District and County, then liability for any damage in that action shall be apportioned between District 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, "District" means the District, 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 District and County, or damage to property of any kind whatsoever and to whomsoever belonging.



- G. The duty of District 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.

**7. 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.

**8. INSURANCE**

The District 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 District shall use diligence to obtain such insurance and to obtain such approval. The District shall furnish the County with certificates of insurance evidencing the required coverage. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County 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 District'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   | \$3,000,000 |
| 2) | Motor Vehicle Liability Insurance | \$1,000,000 |

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**

- A. Section 504 applies only to Contractors who are providing services to members of the public. District shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. General non-discrimination. 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.
- C. Equal employment opportunity. District 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. District's equal employment policies shall be made available to County of San Mateo upon request.
- D. Violation of Non-discrimination provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the District to penalties, to be determined by the County Manager, including but not limited to:
  - 1) Termination of this Agreement;
  - 2) Disqualification of the District from bidding on or being awarded a County contract for a period of up to years;
  - 3) Liquidated damages of \$2,500 per violation;
  - 4) Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.



To effectuate the provisions of this section, the County Manager shall have the authority to examine District's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to District under the contract or any other contract between District and County.

District shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified District that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. District shall provide County with a copy of their response to the Complaint when filed.

- E. Compliance with Equal Benefits Ordinance. With respect to the provision of employee benefits, District shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee with a spouse.

**12. COMPLIANCE WITH CONTRACTOR EMPLOYEE JURY SERVICE ORDINANCE.**

District 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 District, 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 employees deposit any fees received for such jury service with the District or that the District deduct from the employees' regular pay the fees received for jury service.

**12. RETENTION OF RECORDS, RIGHT TO MONITOR AND AUDIT**

Each party agrees to provide to the other party, to any federal or state jurisdiction having monitoring or reviewing authority, to County's or District'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.

District 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.

**13. 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.

**14. 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.

**15. 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 District, to:**

Belmont Fire Protection District  
Attn: Greg Scoles, District Manager  
One twin Pines Lane St. 340  
Belmont CA 94002

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, agree

**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 FIRE PROTECTION DISTRICT**

By: \_\_\_\_\_

(SIGNATURE)

(PRINTED NAME)

Date: 5/15/13



---

# **EXHIBIT A - SERVICES**

## **AGREEMENT BETWEEN**

### **THE COUNTY OF SAN MATEO AND BELMONT FIRE PROTECTION DISTRICT**

---

#### **1. DESCRIPTION OF SERVICES TO BE PROVIDED BY DISTRICT.**

In consideration of the payments set forth in Exhibit "B", District shall perform the following municipal functions:

- Delineation of the responsibilities, cost reimbursements, terms, and administrative processes, related to responding to incidents involving hazardous materials.
- Specification of the role of the Countywide Emergency Services Council in responding to incidents involving hazardous materials.
- Specification of the administrative duties of the Deputy Chief as described herein.
- District 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 hazardous materials emergencies as requested by the cities participating in the CES-JPA.
- District 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.
- District shall house and protect JPA Hazardous Materials Response vehicle(s) and specialized hazardous materials 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.
- District's Deputy Fire Chief, or designee, 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 DEPUTY CHIEF.**

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

### **A. Qualifications.**

- Be a full time employed Deputy Chief with the Belmont Fire Protection District
- Possess a Hazmat Technician/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.**

- If available, the Deputy Chief shall respond to all calls for Hazmat response service which occur during the assigned Deputy Chief's duty hours - includes response to emergencies and incident management of scene. It will be the sole discretion of the Deputy Chief to decide if his/her response is necessary due to the specific nature of the required Hazmat Response.
- The Deputy Chief shall respond as part of the Hazmat Response after normal duty hours if available.
- In the absence of the Deputy Chief, the on-duty Battalion Chief will be advised of Hazmat deployments and respond as necessary.

#### **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 District 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 District 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 Exhibit "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 meetings as required, with San Mateo County Bomb Squad, SWAT Team, and Public Safety Dispatch Services.
- Attend meetings as directed by District management, to address Hazmat issues, with the San Mateo County Fire Chief's Association.

### 5) Training.

- Manage and coordinate all Hazmat Team training activities.

- Establish contacts/plan for in-house training and contracts for outside professional training.
- Coordinate 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:
- 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.**

A. County shall provide the following direct services to Team:

- Use of equipped a Hazardous Materials Response Vehicle and a Hazardous Materials Utility Pick-Up Truck , with a sinking fund established and managed by the Environmental Health Department 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 Team members, through the term of this agreement.
- 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 District shall mutually agree is necessary and desirable.
- On-call County Environmental Health Hazmat Specialist response and diagnostic/handling consultation.

B. 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 District, for the processes set forth in Exhibit "B.



---

## EXHIBIT B - PAYMENTS & RATES

### AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND BELMONT FIRE PROTECTION DISTRICT

---

#### **1. AMOUNT AND RATE OF PAYMENTS.**

- A. The total amount of payment by County to District for FY 2013/2014 (July 1, 2013-June 30, 2014) shall be \$483,564 , which is payable in four equal quarterly installments of \$120,891.
- 1) Reimbursement for Hazmat Training. In addition District will be reimbursed for direct costs for Hazmat training and training related travel for firefighters serving on the Hazmat team. Reimbursement for direct training costs during the term commencing July 1, 2013 through June 30, 2014 shall not to exceed \$24,176. This funding based on the ability of the County to obtain grant funding for said training and reimbursement to District.
- B. The total amount of payment by County to District for FY 2014/2015 (July 1, 2014-June 30, 2015) shall be \$493,236 which is payable in four equal quarterly installments of \$123,309.
- 1) Reimbursement for Hazmat Training. In addition District will be reimbursed for direct costs for Hazmat training and training related travel for firefighters serving on the Hazmat team. Reimbursement for direct training costs during the term commencing July 1, 2014 through June 30, 2015 shall not to exceed \$24,660. This funding for training is based on the ability of the County to obtain grant funding for said training and reimbursement to District.
- C. The total amount of payment by County to District for FY 2015/2016 (July 1, 2015-June 30, 2016) shall be \$505,564 , which is payable in four equal quarterly installments of \$126,391.
- 1) Reimbursement for Hazmat Training. In addition District will be reimbursed for direct costs for Hazmat training and training related travel for firefighters serving on the Hazmat team. Reimbursement for direct training costs during the term commencing July 1, 2015 through June 30, 2016 shall not to exceed \$25,276. This funding for training is based on the ability of the County to obtain grant funding for said training and reimbursement to District.
- D. District shall prepare and submit an invoice for payment of services rendered in accordance with the policies and procedures established by the County Controller's Office. In any event, the total payment for services of District, with the exception of the

aforementioned hazmat training, shall not exceed \$1,482,364. Payments shall be made within 30 days from the date of the applicable undisputed invoice.

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

- “Extraordinary Events” means 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 the 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 to be an “extraordinary Event”. The incident Working Group shall consist of the County Environmental Health Hazmat Program Supervisor; the OES Director; District’s Deputy 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 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. The 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 24-hour period established by the Incident Working Group, including incurring of further extraordinary expenses by the District, shall be mutually determined by said managers, in such consultative manner as they deem appropriate for the incident.
- Should an “Extraordinary Event” occur, District will, as soon as is possible and practical; document the excess expenses which have been incurred. County agrees to conference in good faith with District at the earliest practical opportunity, for the purpose of mutually reviewing expenses and determining the most expeditious process for reimbursement of District’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 , which are related to Section E of this Exhibit, must be reviewed and mutually agreed upon by all parties, to wit: County, District, and the Emergency Services Council, and documented by way of a Side Letter signed by all parties.