
To: Mayor and City Council
From: Alison Foulis, City Clerk
Subject: **Joint Powers Agreement for Hazardous Materials Spills Management**

Recommended Motion/Item Description

That the City Council authorize the approval of a Joint Powers Agreement for Hazardous Materials Spills Management.

Background

The Joint Powers Agreement for Hazardous Spills Management was first approved in 1982, by Marin County cities and towns, and the County. The JPA obtains funding from the participating signatory agencies. Member agencies set policy, approve budgets and provide vision to the management and leadership of the Hazardous Materials Response Team (HMRT) through the Marin County Fire Chief's Association.

The most recent Joint Powers Agreement for Hazardous Materials Spills Management was finalized in 2005. Prior to its expiration in 2015, upon the request of the Marin County Fire Chief's Association, a one-year extension was approved by the City. The one-year extension provided an opportunity for review of the Agreement to make any necessary improvements.

Findings

The proposed Agreement is for a 10-year term and includes 18 signatory agencies. The review and updating of the Agreement has resulted in only minor changes. In addition to wording changes for clarification purposes, the changes include:

- Updates to the components of response capability and procedures
- Additional wording for cost recovery and grant funding
- Updates to the cost sharing section to address the recent fire department mergers
- Expanded wording for the duties of the fiscal agent.
- Requiring approval of two-thirds (2/3) of the signatory agencies for JPA amendments.

The proposed Joint Powers Agreement for Hazardous Materials Spills Management provides for the continuation of cost effective hazardous materials response by coordinating the management of and the response to hazardous materials incidents throughout the County.

Fiscal Impact

Included in the attachments is a cost sharing summary which shows the FY2016/17 contribution amount for each agency. The current signatory agency contribution total is \$75,000 annually. As a result of a financial review, the Marin County Fire Chiefs are requesting to increase the total annual contribution for FY 16/17 to \$85,000. The last contribution increase was in FY13/14. Following the FY16/17 increase, the intent is to limit the annual increases to no more than 5% through FY19/20. The increases are based on analysis of current and future needs. The Chiefs, to reduce future contribution increases, will be seeking grant funding to replace haz-mat identification equipment which is now beyond its useful life.

The City of Belvedere's portion of the cost for HMRT in FY2016/17 is 1.00%, or \$850. This represents a \$100 increase from the current fiscal year.

Recommendation

That the City Council authorize the approval of a Joint Powers Agreement for Hazardous Materials Spills Management.

Attachments

- Resolution authorizing the mayor to sign the Joint Powers Agreement for Hazardous Materials Spills Management.
- Proposed Joint Powers Agreement for Hazardous Materials Spills Management.
- Cost sharing summary.

CITY OF BELVEDERE

RESOLUTION NO. 2016-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE
AUTHORIZING THE MAYOR TO SIGN THE JOINT POWERS AGREEMENT FOR
HAZARDOUS MATERIALS SPILLS MANAGEMENT**

WHEREAS, the City of Belvedere has the responsibility to provide hazard materials respons and spills management; and

WHEREAS, the City of Belvedere has been part of the Hazardous Materials Spills Management JPA since 1982; and

WHEREAS, the Hazardous Materials Spills Management JPA provides a cost effective way of providing hazardous materials response and spills management.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belvedere does hereby authorize the Mayor to sign the Joint Powers Agreement for Hazardous Materials Spills Management.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Belvedere on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____

Claire McAuliffe, Mayor

ATTEST: _____

Alison Foulis, City Clerk

JOINT POWERS AGREEMENT FOR HAZARDOUS MATERIALS
SPILLS MANAGEMENT

THIS AGREEMENT (“Agreement”), is made and entered into as of the 1st day of July 2016, by and between the following public agencies: Cities/Towns of Novato, San Rafael, San Anselmo, Fairfax, Ross, Mill Valley, Belvedere, Tiburon, Sausalito, Corte Madera, Larkspur; County of Marin; Kentfield Fire Protection District; Novato Fire Protection District; Southern Marin Fire Protection District; Tiburon Fire Protection District; Ross Valley Fire Department and Marinwood Community Services District.

RECITALS

This Agreement is predicated upon the following facts:

1. Each of the parties to this Agreement is a “Public Agency” as the term is defined in California Government Code Section 6500 and is authorized to enter into Joint Powers Agreements.
2. The parties are responsible for maintenance of public safety and/or fire protection within their respective jurisdiction within the County of Marin, State of California.
3. Pursuant to Government Code Section 6500 et. seq. commonly known as the Joint Exercise of Powers Act, two or more public agencies may by agreement jointly exercise any power common to the contracting parties.
4. Marin public agencies first entered into an agreement in 1982 for the purposes of coordinating management and response to hazardous materials spills. The current agreement is set to expire on June 30, 2016.
5. Each of the parties desires to enter into a new agreement with each of the other parties for the purposes of coordinating management of and response to hazardous materials spills, establishing a formula for financing joint expenses for such management and response, and defining signatory agency responsibilities.

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

SECTION 1 Definitions

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

A. Hazardous Materials Spill

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

B. Incident Commander

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

C. Unified Command

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

SECTION 2 Authority and Purpose

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

B. The components of this specialized response capability shall consist of;

1. Hazardous Materials Response Team (HMRT) – The HMRT consists of trained fire service personnel from the signatory agencies and Marin County Sheriff's Office, and includes a compliment of apparatus, equipment and trained technicians and specialists. The HMRT shall assist in the control and containment of hazards created by releases and potential releases which exceed the capability of the jurisdiction having primary responsibility, and which shall provide consultation on identifying and managing hazardous materials releases or potential releases in a manner consistent with all local, state and federal laws and regulations regarding such releases.

2. Support Team – The Support Team consists of trained fire service personnel from the signatory agencies to support the HMRT operating in hazardous environments. The Support Team is restricted from operating within or immediately adjacent to chemical environments where hazardous materials emergency response teams would normally operate. The Support Team normally performs activates such as rescue standby, decontamination, and logistical support, under the direction of the Decon Leader.

C. The fiscal agent shall have the authority to collect response related costs on behalf of signatory agencies. Signatory agencies may also collect their response related costs directly from the responsible party.

D. The fiscal agent shall have the authority, on behalf of the signatory agencies, to apply for, receive, and distribute grants from public or private agencies for the purposes set forth in this Agreement.

SECTION 3 Term of Agreement

A. Except as provided below, the term of this Agreement shall be for ten years, beginning on July 1, 2016 and terminating on June 30, 2026. A signatory agency may withdraw upon giving at least ninety (90) days written notice prior to the end of the fiscal year, effective as of the start of the next fiscal year, to all the other parties to the Agreement.

B. Each party to this Agreement certifies that it intends to and does contract with all other parties who are signatories of this Agreement. Each party to this Agreement also agrees that the withdrawal of any party from this Agreement shall not affect this Agreement or such remaining party's intent to contract as described herein, with the other then remaining parties to the Agreement other than to alter the pro rata share of costs.

SECTION 4 Operational Responsibilities

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

1. Immediately isolate the scene, deny access to the scene and seek to protect people and/or livestock in the general vicinity.

2. Notify the Marin County Public Safety Communications Center (County Communications) of the location of the incident and affected area, the type of incident (traffic accident, pipe breakage, etc.), the type and quantity of hazardous material or the characteristics of the material if its type is unknown, safe and unsafe routes to the scene, and request immediate notification of the HMRT.

B. Upon notification of a hazardous materials release, County Communications will contact the Marin County Fire Department ECC for dispatch of the HMRT and such other resources as called for by the protocol of the jurisdiction in which the spill occurs. (The California Highway Patrol has jurisdiction over State highways.)

C. For each incident, command responsibility shall be delegated according to applicable State law. Where State law does not designate responsibility, each signatory city and County shall specify in writing to the HMRT at regular intervals command

authority for incidents within its jurisdiction. The incident commander may request additional assistance as he or she deems necessary to restore public health and safety.

D. When the HMRT determines that specialized resources may be required to mitigate the release or assist with clean-up, the HMRT shall provide the Incident Commander with the contact information for such resources.

E. After an incident is under control, as determined by the Incident Commander, the following clean-up protocol shall be followed. First, a reasonable attempt shall be made to give the person(s) responsible for the incident adequate notice and opportunity to remove the hazardous substance. If, in the judgment of the Incident Commander, such opportunity has been adequately provided, considering the conditions, the Incident Commander may authorize additional clean-up operations be carried out, if appropriate, by (1) the City/Town Public Works Department in which the incident occurred, (2) County Public Works for incidents in the unincorporated area, (3) California Department of Transportation for incidents on a State highway, or (4) a licensed Hazardous Waste Clean-up Contractor. The Incident Commander may authorize such additional clean-up arrangements determined to be appropriate for the restoration of public health and safety and for nuisance abatement. Clean-up of private property beyond these requirements shall be the responsibility of the property owner under the auspices of the County Health Officer.

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

SECTION 5. Resource Inventory

A. The signatory agencies agree to fund apparatus, equipment, training, medical monitoring, and personal protective equipment as may be required by the fiscal agent specified in Section 6E to meet state and federal OSHA regulations pertaining to hazardous materials release response.

B. Each signatory agency shall provide the HMRT, when requested, with available information concerning the storage location and use of hazardous materials in its jurisdiction for reference by the HMRT.

SECTION 6. Financing

A. The principles for allocating responsibility for costs arising from response to a hazardous materials release shall be as follows:

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

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

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

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

B. The fiscal agent shall prepare and submit an annual budget, and any supplemental budget, to the Marin County Fire Chief's Association for approval. Public funds may not be disbursed by the HMRT without adoption of the approved budget, and all receipts and disbursements shall be in strict conformance with the approved budget. Following approval of the budget, and any supplemental budget, the fiscal agent shall invoice each party for its share of the budgeted costs, and payment shall be due to the fiscal agent within 30 days of such invoices.

C. Cost sharing, to support the Hazardous Materials Response Team and to compensate the City of San Rafael for its services as fiscal agent as provided in subsection C below, shall be allocated on a jurisdiction percent of population based on the County of Marin’s current census data. Where a Fire District and City share the population, each shall contribute one half of the shared cost.

<u>Jurisdiction</u>	<u>Percent Population</u>
City of Belvedere	1.0
Town of Corte Madera	3.6
County of Marin	11.6
Kentfield FPD	3.0
City of Larkspur	4.8
Marinwood CSD	2.0
City of Mill Valley	5.7
City of Novato	11.65
Novato FPD	11.65
Ross Valley FD*	10.5
City of San Rafael	21.0
Southern Marin FPD**	9.2
Town of Tiburon	3.3
Tiburon FPD	<u>1.0</u>
Total	100%

* Ross Valley FD percentage share includes Ross, San Anselmo, and Fairfax.

** Southern Marin FPD percentage share includes Sausalito.

D. Any non-participatory agency shall be responsible for all costs incurred by the Hazardous Materials Response Team.

E. The City of San Rafael is designated to be the fiscal agent of the parties under this Agreement, with the following functions, for which the City of San Rafael shall be reasonably compensated by the parties:

1. Serve as the depository and have custody of all funds from whatever source and establish and maintain such books, records, funds, and accounts as may be required by reasonable accounting practices.
2. Ensure that the disbursement of funds is in strict conformance with the adopted budget.

3. Provide an annual financial report on a fiscal year basis, and such other financial reports as may be requested by the Marin County Fire Chief's Association.
4. Administer cost recovery procedures for the collection of response related expenses and damages.
5. Serve as the financially responsible party for all grants.

SECTION 7. Amendment

Amendments to this Agreement may be made by the approval of two-thirds (2/3) of the governing boards of the then signatory agencies.

SECTION 8. Notices

Except as provided in Section 3 for notices of withdrawal from this Agreement, all notices required or given pursuant to this Agreement shall be made by depositing same in the U.S. mail, postage paid, and addressed as follows:

Hazardous Materials Response Team, c/o City of San Rafael Fire Department, P.O. Box 151560, San Rafael, CA 94915.

SECTION 9. Hold Harmless

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

The tort liability of the parties shall be controlled by the provisions of Government Code Division 3.6, Section 810 et seq.

SECTION 10. Entire Agreement

This JPA sets forth the entire Agreement between the parties with respect to content addressed herein and supersedes all prior agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated Agreement.

SECTION 11. Execution in Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed and scanned signature pages shall be treated as valid as the originals.

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

AGENCY: _____

By: _____

ATTEST:

Cost Sharing Summary

Agency	Cost Share	2016/17 Increase	2016/17 \$85,000	2015/2016 \$75,000	2014/15 \$75,000	2013/14 \$75,445	2012/13 \$68,586
City of Novato	11.65%	\$1,165	\$9,903	\$8,738	\$8,738	\$8,789	\$7,990
Town of Tiburon	3.30%	\$330	\$2,805	\$2,475	\$2,475	\$2,490	\$2,263
Mill Valley	5.70%	\$570	\$4,845	\$4,275	\$4,275	\$4,300	\$3,909
So. Marin Fire	9.20%	\$920	\$7,820	\$6,900	\$6,900	\$6,941	\$6,310
Tiburon Fire	1.00%	\$100	\$850	\$750	\$750	\$754	\$686
Kentfield Fire	3.00%	\$300	\$2,550	\$2,250	\$2,250	\$2,263	\$2,058
Novato Fire	11.65%	\$1,165	\$9,903	\$8,738	\$8,738	\$8,789	\$7,990
Marinwood	2.00%	\$200	\$1,700	\$1,500	\$1,500	\$1,509	\$1,372
Corte Madera	3.60%	\$360	\$3,060	\$2,700	\$2,700	\$2,716	\$2,469
County of Marin	11.60%	\$1,160	\$9,860	\$8,700	\$8,700	\$8,752	\$7,956
Larkspur	4.80%	\$480	\$4,080	\$3,600	\$3,600	\$3,621	\$3,292
Ross Valley Fire	10.50%	\$1,050	\$8,925	\$7,875	\$7,875	\$7,922	\$7,202
Belvedere	1.00%	\$100	\$850	\$750	\$750	\$754	\$686
San Rafael	21.00%	\$2,100	\$17,850	\$15,750	\$15,750	\$15,843	\$14,403
Total	100.00%	\$10,000	\$85,000	\$75,000	\$75,000	\$75,445	\$68,586