

**RESTATED AND AMENDED HAZARDOUS MATERIALS RESPONSE AUTHORITY
AGREEMENT**

FOR WASHTENAW COUNTY AND ADJACENT COMMUNITIES

THIS RESTATED AND AMENDED HAZARDOUS MATERIALS RESPONSE AUTHORITY AGREEMENT made this ____ day of _____, 2016, by and between the County of Washtenaw, a Michigan municipal corporation, the City of Ann Arbor, Washtenaw County, a Michigan municipal corporation, the City of Ypsilanti, Washtenaw County, a Michigan municipal corporation, the Charter Township of Pittsfield, Washtenaw County, a Michigan charter township and the Charter Township of Ypsilanti, Washtenaw County, a Michigan charter township (hereinafter collectively referred to as “Enabling Public Agencies”)

RECITALS:

The Urban Cooperation Act, Act 7 of the Public Acts of Michigan of 1967 (extra session), as amended (hereinafter referred to as “Act 7”), provides that local governmental units as defined in Act 7 may enter into Interlocal agreements, which agreements may provide for a joint exercise of any power, privilege or authority which the local governmental units share in common and which each might exercise separately.

The Enabling Public Entities recognize that they are mutually interdependent and that it is in their mutual best interest and the best interest of their resident to address area-wide hazardous materials response needs and the cost sharing of providing regional services and meeting regional needs on a county-wide basis.

The Enabling Public Entities entered into an Agreement Creating a Hazardous Materials Response Authority for Washtenaw County and Adjacent Communities, dated May 10, 1996 (hereinafter referred to as the “Agreement”) pursuant to Act 7 for the mutual benefit of the residents of the Enabling Public Entities and other public agencies engaged in, or interested in hazardous materials response would at a future date join as parties to this Agreement.

Subsequently, the Enabling Public Entities have entered into amendments to the Agreement; however, the Enabling Public Entities have determined that it is appropriate at this point to integrate these amendments and restate the rights and obligations of the Enabling Public Entities and any other agency later joining in this Agreement.

All payments made to the Authority and moneys collected by the Authority prior to the date of this restatement shall, for the fiscal integrity of the Authority, continue to be safeguarded by the County of Washtenaw and used for the purposes enumerated in the Agreement, as originally stated and subsequently restated herein

Therefore, it is agreed by the Enabling Public Entities that that the terms of Agreement are restated and amended to read in their entirety as follows:

TERMS:

ARTICLE ONE – NAME AND PURPOSE

- 1.1 The parties to this Agreement are creating, by powers granted in state law, a legal entity to be known as the Washtenaw County Hazardous Materials Response Authority (hereinafter, "the Authority").
- 1.2 The purpose of this Authority is to assist contracting local fire departments by providing a trained and equipped hazardous materials response team that provides on-scene support to the incident commander (highest ranking fire department official with jurisdiction) including hazardous incident rescue when possible; and for the purpose of confining, containing, plugging, patching or otherwise stopping life threatening or environmentally dangerous chemical releases. The Authority's purpose does not include environmental remediation actions.
- 1.3 The Authority may enter into agreements with one or more public or private agencies to receive services under this agreement. Such contracted services may include, but are not limited to, providing personnel, equipment and supplies to the Authority.
- 1.4 The Authority may also enter into agreements with one or more public or private agencies interested in receiving hazardous materials response assistance from the Authority. Each implementing agreement will specify the contribution to the Authority to be made by the Agency during the term of the agreement, and will specify the services that are to be rendered by the Authority.
- 1.5 The Authority will operate as follows:
 - 1.5.1 Its support services, including fiscal administration control, will be provided by the County of Washtenaw.
 - 1.5.2 The Authority will receive financial support from one or more sources, including contributions, user fees for service from public agencies or private organizations, grants, or tax subsidies.
 - 1.5.3 The Authority will provide hazardous materials response assistance to any Participating Public Agency currently under contract with the Authority
 - 1.5.4 The Authority and the service it provides are intended as a public service, not as an instrument for the sale of hazardous materials response services. To that end, the membership of the Board and the membership of the Technical Advisory Committee are composed to include a wide variety of membership and expertise. The structure is adopted deliberately, to make sure the viewpoints of all public agencies and the viewpoints of entities and individuals involved in the handling of hazardous materials, as well as the viewpoints of the public are represented. It is also done to improve coordination of services, to reduce costs, and to encourage greater participation in the Authority and its work by all relevant parts of Washtenaw County and surrounding communities.

ARTICLE TWO - DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

2.1 "Implementing Agreement" means an agreement described in paragraph 1.3.

2.2 "Authority" refers to the Washtenaw County Hazardous Materials Response Authority,

2.3 "Board" refers to the Board of Directors of the Authority, as described in this Agreement.

2.4 "Budget" refers to the annual fiscal plan regarding anticipated revenues and expenditures of the Authority adopted by the Board.

2.5 "Committee" refers to the Technical Advisory Committee of the Authority, as described in Section 4 of this Agreement.

2.6 "Fiscal Year" refers to the period of time in which the Authority's annual budget shall be effective and shall be concurrent with the calendar year.

2.7 "Legislative Body" refers to the governing body of a public agency.

2.8 "Majority" means one (1) more than half of those eligible to vote.

2.9 "Private Safety Entity" refers to a private entity which provides emergency fire, ambulance or other emergency medical services.

2.10 "Properly Convened Meeting" refers to a Board or Committee meeting where a quorum is present and which was the subject of five days prior written notice to each member.

2.11 "Quorum" consists of one (1) more than half of those eligible to vote.

2.12 "Participating Public Agencies" refers to public agencies which, through contractual arrangements with the Authority, contribute funds or other resources to the Authority in return for hazardous materials response services.

2.13 "Public Agency" refers to the State of Michigan, a county, or any village, township, charter township, or city or any special purpose district.

2.14 "Public Safety Agency" refers to a functional division of a public agency which provides law enforcement, fire suppression, ambulance services, or other emergency services.

2.15 "Enabling Public Agency" refers to the County of Washtenaw, the City of Ann Arbor, the City of Ypsilanti, the Charter Township of Pittsfield and the Charter Township of Ypsilanti. Enabling Public Agencies must have respective populations of at least 15,000 residents, and will be expected to provide resources, including personnel and some level of funding to the organization.

2.16 "Technical Advisory Committee" refers to the Committee described in Section 4 of this Agreement.

ARTICLE III - Governance

3.0 Board of Directors

3.1 Composition. The Authority shall be governed by a Board of Directors ("Board"), to be composed of at least eleven (11) members. Those eleven shall consist of:

A representative of each Enabling Public Agency, including:

A representative of Washtenaw County

The City of Ann Arbor Fire Chief

The City of Ypsilanti Fire Chief

The Charter Township of Pittsfield Fire Chief

The Charter Township of Ypsilanti Fire Chief

Three representatives of other Participating Public Agencies, which will be selected by the Washtenaw County Fire Mutual Aid Association Fire Chiefs, and will be geographically representative of the county.

A representative of a Participating Public Agency, who is recommended by the Washtenaw County Criminal Justice Association.

The Washtenaw County Public Health Officer or his or her designee.

A representative of the Washtenaw County ambulance contractor.

3.1.1 Each Board Member shall have an alternate who may attend all Board meetings and may vote in the absence of the Member. The alternate shall be appointed in the same manner as the Member, and shall serve for the same term.

3.2 Selection of Board Members. Board members shall be selected by the entity being represented, and shall serve at its will.

3.3 Terms of Board Members. The three representatives of the Participating Public Agencies, which are recommended by the Washtenaw County Fire Mutual Aid Association, shall be selected for a term

of three years each, with initial terms of one year, two years and three years. The Board members may be removed at the will of the entity they represent.

3.4 Powers. In addition to policy-making power and any other power expressly conferred herein, the Board is empowered to perform the following functions for the Authority, to facilitate the purpose of this Agreement:

3.4.1 Enter into contracts with the approval of the Authority legal counsel;

3.4.2 Contract with public safety agencies and/or private entities for their provision of staffing, equipment, supplies, and/or administrative or support services;

3.4.3 Receive and administer grants, gifts, bequests, or assistance funds;

3.4.4 Incur operational liabilities;

3.4.5 Prepare the Authority's annual budget;

3.4.6 Establish other policy for the administration of the Authority and its functions.

3.4.7 Employ, engage, compensate, transfer or discharge necessary personnel.

3.4.8 Acquire, own, use, operate, maintain, lease or sell real or personal property.

3.4.9 Dispose, divide or distribute any property acquired through the execution of this agreement.

3.4.10 Make claims for federal or state aid.

3.4.11 Obtain insurance coverage for the Authority and its enabling and participating members.

Notwithstanding the above, the authority of the Board shall be limited to binding the Authority and making policy for the Authority. The Board shall not have authority to make policy for any other entity, or to commit, disburse, or encumber the funds and/or resources of public and private agencies or public safety agencies.

3.5 Meetings. A regular meeting of the Board will be held in January to elect a Chair and Vice Chair. Unless scheduled for another time, that meeting will be held at 10:00 A.M. (E.S.T.) on the second

Tuesday of that month at a place designated by the Board of Directors. The Board shall attempt to meet at least quarterly, including its mandatory meeting in January. The Board may meet more frequently at its discretion.

3.6 Quorum and Majority. The Board shall not take action except at a properly convened meeting at which a quorum is present. Action is to be taken by the affirmative vote of a majority of a quorum. Each Board member shall have one vote and proxy voting is not permitted.

3.7 Presiding. The Chairperson, or in his or her absence, the Vice Chairperson, shall preside at Board meetings.

3.8 Minutes. Minutes shall be kept and distributed to each member for each Board meeting.

3.9 Compensation. Board members shall serve without compensation.

Article IV - Technical Advisory Committee

4.0 Technical Advisory Committee

4.1 Composition and Function. The Authority's policies with respect to management of the system and technical matters shall be set (within limits set by the Board, agreements binding the Authority, and state and federal law) by a Technical Advisory Committee, to be composed of at least twelve (12) members. These twelve shall represent respectively

Fire Departments of the Enabling Public Agencies, including:

Ann Arbor Fire Department

Pittsfield Township Fire Department

Ypsilanti Fire Department

Ypsilanti Township Fire Department

Three Fire Departments, who will be selected by the Board upon the recommendation of the Washtenaw County Fire Mutual Aid Association.

Washtenaw County ambulance contractor

Washtenaw County Office of the Water Resources Commissioner

Washtenaw County Sheriff's Office Emergency Services Division

Washtenaw County Public Health Department Environmental Health Division

Hazardous Materials Response Team Director

Each representative shall be appointed by the represented entity and shall serve at its will, except that the representatives of the three fire departments recommended by the Mutual Aid Association will be appointed for one year terms which shall follow the calendar year. The Authority, through its Board, shall create additional seats on the Committee from time to time as it deems appropriate to meet the needs of the Authority.

4.1.1 Each Committee member may have an alternate who may attend all Committee meetings and may vote in the absence of the Member. The alternate shall be appointed in the same manner as the Member and shall serve for the same term.

4.2 Meetings. The Committee shall attempt to meet at least once every other month and more often, if necessary.

4.3 Quorum and Vote. The Committee shall take action at a properly convened meeting at which a quorum is present and action is taken by the affirmative vote of a majority of a quorum. Each committee member shall have one vote and proxy voting is not permitted.

4.4 Presiding. The Board of Directors shall appoint a member of the Committee who shall chair at Committee meetings.

4.5 Minutes. Minutes shall be kept and distributed for each Committee meeting.

4.6 Compensation. Committee members shall serve without compensation.

ARTICLE FIVE - OPERATIONS

5.1 Hazardous Materials Response Team. The Authority shall operate a Hazardous Materials Response Team (HAZMAT Team).

5.2 Director. The Board shall appoint a "Hazardous Materials Response Team Director". The Director shall have day-to-day supervisory responsibilities of the HAZMAT Team. In addition to those supervisory responsibilities, the Director shall assist the Board in preparing its annual budget and operational policies for the Authority. The Director shall keep an accurate accounting of the financial operations of the Authority and shall report on a regular basis to the Board regarding its financial condition. The Director shall attend Board meetings, and shall be a non-voting, ex-officio member of the Board. The Director shall also attend Technical Advisory Committee meetings, and shall be a voting member of the Committee.

5.3 The Director may appoint individuals to assist him or her in the day-to-day responsibilities of team operation and administration. Such appointments shall be approved by the Board.

ARTICLE SIX - Fiscal Administration

6.1 Budget. For each fiscal year in accordance with the County's budget schedule, the Board shall approve, and shall submit to the County Board of Commissioners for approval an Authority budget which shall be a line-item budget in accordance with the Uniform Budget and Accounting Act. No expenditure may be authorized by the budget or by later action of the Authority, if it will result in an actual budgetary account deficit or is at a rate which will eventually lead to an actual budgetary account deficit prior to the end of the fiscal year. The Board shall recommend to the County Board of Commissioners that the budget be amended, if necessary to meet deviations in expected revenues or authorized expenditures. There shall be no Authority expenditure except pursuant to a budget approved by the Board and County of Washtenaw.

6.2 Annual Audit. The Authority revenues and expenditures shall be subject to a complete, annual audit, which will include an audit opinion without qualifications, to be performed by a certified public accountant. Such audit may be incorporated within, and constitute a part of an established public agency or public safety agency annual audit process. The Chief Financial Officer of each Enabling Public Agency and of each Participating Public Agency shall be given access to the annual budget, fund balances and expenditures, as well as the annual audit.

6.3 Delegation to Washtenaw County. All power to receive, hold, and actually disburse funds or money equivalents shall be exercised for the Authority by the County of Washtenaw under the same controls and policies that it applies to all other funds or equivalents for which it is responsible. The County of Washtenaw shall receive all payments made to the Authority and shall disburse all payments made by the Authority, whether or not there is an implementing agreement in force between the Authority and the County of Washtenaw. The county of Washtenaw shall provide the Authority with reasonable information on the state of the Authority's finances and with respect to particular transactions. If there is in effect an implementing agreement between the County of Washtenaw and the Authority, that implementing agreement shall contain provisions specifying how the delegated fiscal powers shall be exercised, how information on fiscal matters is to be provided to the Authority, and how the money resources of the Authority are to be safeguarded from illegal or otherwise improper action or inaction. If no such implementing agreement is in force, but the Authority has not been terminated and all its funds accounted for and distributed, the County of Washtenaw shall safeguard the fiscal integrity of the Authority as it sees fit in its reasonable discretion, provided all payments made to the Authority and moneys collected by the Authority shall be used only for purposes of replacing equipment, materials, supplies, personnel costs or other expenditures to benefit the Authority.

ARTICLE SEVEN - Participation

7.1 Participation. Any public safety agency in Washtenaw County may become a Participating

Public Agency by contracting with the Authority. Public Safety agencies outside of Washtenaw County may become a Participating Public Agency at the sole discretion of the Board.

ARTICLE EIGHT - Miscellaneous

8.1 Extent of Agreement. This Restated and Amended Agreement constitutes the complete expression of the agreement between the parties. There are no other representations, warranties, promises, guarantees or oral or written, expressed or implied, agreements between the parties concerning the subject matter of this Agreement.

8.2 Severability. This Agreement shall be interpreted in a manner consistent with applicable law. If any portion is held to be illegal, invalid, or unenforceable, the remainder of the Agreement shall be deemed severable and shall remain in full force and effect.

8.3 Non Waiver. None of the enabling members by participating in the Authority waives any of its legal rights or defenses with respect to any third party or parties. None of the enabling members by participating in the Authority expressly or impliedly assumes any liability of any other enabling member, the "Authority" or any other third party.

8.4 Insurance. Washtenaw County, as the coordinating fiscal agency, shall procure "insurance" policies to provide coverage, but only to the extent provided by the insurance policies, for the insurable risks of "the Authority" hazardous materials response activities, their premises, assets and income, if any, as-their-interest-may-appear (ATIMA). Such "insurance" shall name each participating public agency as a Named Insured.

The term "insurance", within this section, shall be construed to include alternate forms of protection, such as government 138 pools, self-funding mechanisms, large Self-Insured Retention (SIR) programs, or any other acceptable form of risk financing.

8.5 Duration. This Agreement shall continue without interruption as herein restated and amended for a period of fifteen years, commencing on the date stated above , unless earlier terminated by all of the Enabling Public Agencies. An individual Enabling Public Agency may terminate by giving at least one year's written notice of termination to the other Enabling Public Agencies .

8.6 Termination Distribution of Assets. In the event of termination of this agreement and/or dissolution of the Authority, the assets of the Authority shall revert to Enabling Public Agencies and Participating Public Agencies. Each agency shall receive a percentage of the distribution which equals the percentage of contribution by that agency as related to the total contribution of all agencies.

8.7 Amendments. Amendments to this Agreement must be approved, in writing, by the governing boards of the Enabling Public Agencies, prior to taking effect.

This Agreement has been negotiated on behalf of the Participants by their respective officers pursuant to authority delegated to them and by their respective governing bodies and is executed with the approval of the respective governing bodies.

ENABLING MEMBERS:

WASHTENAW COUNTY

By: _____

Date: _____

ATTESTED TO:

Lawrence Kestenbaum, County Clerk

Date: _____

APPROVED AS TO FORM:

Curtis Hedger, Corporation Counsel

Date: _____

CITY OF ANN ARBOR

By: _____

Date: _____

By: _____

Date: _____

APPROVED AS TO FORM

Stephen K. Postema, City Attorney

CHARTER TOWNSHIP OF PITTSFIELD

By: _____

Date: _____

CITY OF YPSILANTI

By: _____

Date: _____

By: _____

Date: _____

APPROVED AS TO FORM

John Barr, City Attorney

CHARTER TOWNSHIP OF YPSILANTI

By: _____

Date: _____