

**COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF EMERGENCY MANAGEMENT
AND
THE CITY OF ALEXANDRIA, ON BEHALF OF
THE NORTHERN VIRGINIA HAZARDOUS MATERIALS RESPONSE TEAM**

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is made by and between the Commonwealth of Virginia, Department of Emergency Management (VDEM) and the City of Alexandria, a political subdivision within the Commonwealth of Virginia.

WHERE AS, There exists within the Commonwealth of Virginia the potential for serious accidents, as well as man-made and natural disasters; and

WHERE AS, The public health, safety and welfare may be threatened as a result of these incidents; and

WHERE AS, The VDEM is authorized by Va. Code Ann. §§ 44-146.18 and 44-146.36.A to enter into agreements to provide hazardous materials emergency response, necessary or incidental to performance of any of its duties, with political subdivisions and other public and private entities; and

WHERE AS, The City of Alexandria is the host jurisdiction of the Northern Virginia Hazardous Materials Response Team; and

WHERE AS, The City of Alexandria and VDEM desire to enhance the Commonwealth's Emergency Management capabilities to protect the environment and the health, safety, and welfare of the citizens of the Commonwealth from the dangers and potential dangers of accidents and incidents during natural and man-made emergencies by entering into this Agreement for the City of Alexandria to provide a Hazardous Materials Response Team to areas impacted by events in the Commonwealth of Virginia or to fulfill a request for assistance under the Emergency Management Assistance Compact (EMAC), Va. Code Ann. § 44-146.28:1.

NOW, THEREFORE, in consideration of the foregoing, the parties hereby agree as follows:

I. DEFINITIONS

The terms set forth below shall have the following meanings unless the context clearly requires otherwise:

1. **Hazardous Materials** (see Virginia Code Section 44-146.34): means substances or materials which may pose unreasonable risks to health, safety, property, or the environment when used, transported, stored or disposed of, which may include materials which are solid, liquid or gas. Hazardous materials may include toxic substances,

flammable and ignitable materials, explosives, corrosive materials, and radioactive materials and include (i) those substances or materials in a form or quantity which may pose an unreasonable risk to health, safety, or property when transported, and which the Secretary of Transportation of the United States has so designated by regulation or order; (ii) hazardous substances as defined or designated by law or regulation of the Commonwealth or law or regulation of the United States government; and (iii) hazardous waste as defined or designated by law or regulation of the Commonwealth.

2. National Fire Protection Association Standard 472 (NFPA 472) Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents: This standard identifies the minimum levels of competence required by responders to emergencies involving hazardous materials/weapons of mass destruction (WMD). It includes the competencies for awareness level personnel, operations level responders, hazardous materials technicians, incident commanders, hazardous materials officers, hazardous materials safety officers, and other specialist employees. VDEM uses this standard to establish training and certification requirements for the state's hazardous materials program.

II. RESPONSIBILITIES OF VDEM

A. VDEM agrees to provide:

1. Annual funding within the constraints of the budget authorized by the General Assembly to assist the team in defraying costs in maintaining team readiness. VDEM will provide annual funding guidance which will include total amount and directives on use to ensure team readiness prior to the start of the Commonwealth's fiscal year.
2. Hazardous materials training to maintain the minimum team roster in accordance with this agreement. Cost of lodging and per diem for each member will be provided when training is outside the locality in accordance with state travel regulations.
3. An annual inspection of the team's training records, financial records, medical records, and equipment inventory to ensure compliance with this agreement. The inspection will be led by the Hazardous Materials Program Manager and supported by a member of the VDEM's financial management staff.

B. VDEM shall request Hazardous Materials Response Team assistance in accordance with the procedures set forth in Appendix A.

C. VDEM shall reimburse all eligible expenses incurred during a VDEM-authorized State hazmat response in accordance with the below procedure.

D. VDEM will place the Northern Virginia Hazardous Materials Response Team in the non-competitive category of the State Homeland Security Grant program in order to provide access to additional potential funding to support team equipment and training aligned with published annual hazardous materials program grant funding priorities.

E. VDEM will certify team members under the provisions of the U.S. Occupational Safety and Health Administration (OSHA) 29 Code of Federal Regulations (CFR) 1910.120 (q) and the National Fire Protection Association (NFPA) Standard 472 for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents (2013). Types of certification includes the following:

1. Hazardous Materials Technician: Complete Hazardous Materials First Responder-Awareness, Hazardous Materials First Responder-Operations, and the Hazardous Materials Technician course.
2. Hazardous Materials Specialist: Complete the Technician standard above and Chemistry of Hazardous Materials and Hazardous Materials Advanced Tactical Control.
3. Hazardous Materials Safety Officer/Hazardous Materials Officer: Meet technician requirement above and complete the Tactical Command and Safety Course.
4. Hazardous Materials Technician with Radioactive Materials Specialty: Meet technician requirement above and successfully meet the competencies of Chapter 18 of NFPA 472 (courses outside VDEM are acceptable, applications will be reviewed on a case by case basis).
5. Hazardous Materials Technician with Weapons of Mass Destruction Specialty: Meet technician requirement above and successfully meet the competencies of Chapter 23 of NFPA 472 (courses outside VDEM are acceptable, applications will be reviewed on a case by case basis).

III. RESPONSIBILITIES OF THE HOST JURISDICTION

A. The City of Alexandria agrees to provide:

1. A group of 40 Hazardous Materials Response Team members. All assigned team members will be certified at the technician level. In addition, at a minimum, 25 percent of assigned team members must be certified at the specialist level. Only certified personnel currently listed on the team roster will participate in VDEM activated responses.
2. Necessary response vehicles and equipment with adequate garaging, storage, and maintenance thereof, in accordance with reasonable safety and operating standards.
3. Team response 24 hours per day, seven days per week, at the request of VDEM, within 30 minutes of notification. See Appendix A.

4. Access to team equipment and training records by the VDEM Hazardous Materials Program manager during normal business hours. A roster of team personnel will be furnished to the Program Manager on a semi-annual basis.
 5. Baseline and annual medical examinations for all team members and leaders. Documentation to be provided for all team members and leaders as requested. See Appendix C for guidelines for physicals.
 6. A written response report using provided forms to VDEM within 24 hours following a response.
- B. Report team readiness to the VDEM's Situation Awareness Unit to ensure VDEM maintains an accurate team status at all times. VDEM will assume the team is ready unless notified the team is out of service or under a delayed response beyond the required 30 minute deployment time. Nature of status will be reported as well (mechanical, personnel, training-delayed response, etc) along with an estimate on when the team will return to a ready status. In addition, team will report response updates to the SAU which includes: acknowledge activation, enroute, on-scene, clearing the scene, and back in quarters. Status may be reported by phone, through the locality's PSAP or via STARS radio.
- C. The City of Alexandria agrees to maintain training proficiency for all team members by having each member complete, as a minimum, 24 hours of continuing education annually and participate in annual drills or exercises developed or sponsored by VDEM.
- D. For the life of this agreement, the City of Alexandria will maintain the minimum State hazmat response equipment inventory as specified in Appendix B attached hereto.
- E. The City of Alexandria agrees to comply with Virginia Standards for General Industry, as found in 29 CFR 1910 and, in particular, the regulations found in 29 CFR Part 1910.120, Hazardous Waste and Emergency Response.
- F. The Northern Virginia Hazardous Materials Response Team agrees to participate with VDEM and other State Special Operations teams in the strategic planning process and abide by its implementation.
- G. The Northern Virginia Hazardous Materials Response Team agrees to coordinate with other VDEM Special Operations teams to ensure interoperability and standardization of equipment.
- H. The Northern Virginia Hazardous Materials Response Team agrees to support requests for assistance under the Emergency Management Assistance Compact (EMAC).

IV. REIMBURSEMENT PROCEDURE

- A. Payment will be made only for authorized expenses for responses authorized by VDEM. Authorized expenses include the following:
1. Payment of salaries, wages, fringe benefit costs of response personnel, and other expenses (in accordance with state guidelines) incurred during a response activated by VDEM. Time billed will start when the team is activated by VDEM and concludes when the team has returned to their base of operations in their locality. Up to two additional hours for equipment cleanup (when necessary) are authorized and also costs associated with backfill personnel.
 2. Payment for or resupply of expendable materials used during the incident.
 3. Payment for or replacement of nonexpendable items damaged beyond economical repair. A statement is required documenting extent of damage, length of time in use, and condition of item at time of damage.
 4. Payment for repair of nonexpendable items.
 5. Payment of workers' compensation claims.
 6. Reimbursement for the use of team equipment using the below schedule.
 7. Payment for vehicle insurance deductible only (up to \$1,000) if the vehicle is involved in an accident on a State hazmat response. If a third party is involved in an incident and is at fault, collection will be attempted by the team from the third party before VDEM will reimburse.
- B. Team will submit a Cost Recovery Form to VDEM's Chief Financial Officer within 10 days following a response to request reimbursement of authorized expenses as outlined within. Payment will be made within 30 days of VDEM cost validation.
- C. Prior to the end of hour 72 of a team response, the State Coordinator of the VDEM (or his designee) will coordinate with the affected jurisdiction to determine if the jurisdiction, the state, or the federal government will continue funding the Hazardous Materials Response Team or whether they will be demobilized.
- D. The latest FEMA Schedule of Equipment Rates will be used to determine equipment use cost (see 44 CFR § 206.228). Mileage reimbursement will be at the current IRS rate.

V. LIABILITIES

- A. VDEM agrees that the Northern Virginia Hazardous Materials Response Team is an authorized agent of VDEM when its personnel are responding to a VDEM activated request.

- B. Pursuant to §§ 44-146.23 and 44-146.36.B of the Code of Virginia, when the Northern Virginia Hazardous Materials Response Team is an authorized agent of VDEM and acting within the scope of such authorization, the Team and its members enjoy limited protection from liability to the same extent as a State employee when deployed by VDEM under the circumstances of this Agreement. Virginia Code Ann. § 44-146.23 does not preclude liability for civil damages as a result of gross negligence, recklessness or willful misconduct.
- C. In accordance with Va. Code Ann. § 65.2-101, any member of the Northern Virginia Hazardous Materials Response Team who responds to an incident upon request of VDEM, shall be deemed an employee of VDEM for the purposes of the Virginia Workers' Compensation Act. This includes costs associated with medical care related to an illness or injury suspected of being caused or actually caused by acute exposure to hazardous materials as a result of State hazmat response activities.

VI. RIGHT TO REFUSE RESPONSE REQUEST

The City of Alexandria reserves the right to refuse a VDEM request for the Northern Virginia Hazardous Materials Response Team if its resources are already committed to other activities, emergencies, or other impending weather or disaster related events. The SAU must be notified immediately anytime the team is out of service due to these circumstances.

VII. TERMINATION

This Agreement may be terminated by either party upon 60 days written notice thereof to the other party.

VIII. ENTIRE AGREEMENT

- A. This Agreement, including all Appendices, may be modified from time to time by written agreement of the parties hereto and which Appendices are hereby incorporated by reference as a part of this Agreement, represents the entire and integrated Agreement between the parties and supersedes any and all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by all authorized representatives of all parties of said Agreement.
- B. This Agreement shall not preempt any existing mutual aid agreements (written or verbal) now in effect by the City of Alexandria.
- C. This Agreement is not legally enforceable by any third party, does not create enforceable rights in any third party, nor shall any third party be considered a third party beneficiary of this Agreement. As such it does not imply or assume any waiver of sovereign immunity by the Commonwealth of Virginia or the City of Alexandria.

D. This agreement supersedes and cancels any previous agreements signed between VDEM and the City of Alexandria.

IX. DURATION OF MEMORANDUM OF UNDERSTANDING

A. This MOU is effective upon the signature the State Coordinator of VDEM or his designee, and will expire June 30, 2023.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by the following duly authorized persons:

City of Alexandria by: Debra R. Collins, Deputy City Manager.
Mark B. Jinks, City Manager
Signature: [Signature] Title: Deputy City Manager
Date: 2/7/19

Virginia Department of Emergency Management by: _____

Signature: _____ Title: State Coordinator

Date: _____

George M. Andrews
Assistant City Attorney
Approved as to Form

APPENDIX A

RESPONSE PROCEDURES

VDEM will activate the Northern Virginia Hazardous Materials Response Team by notifying the team's local Public Safety Answering Point (PSAP), commonly known as a 911 call center. The locality's PSAP will immediately notify appropriate personnel to facilitate the rapid deployment of the team. To the extent known at the time, requests shall specify:

1. The nature of the emergency and its location
2. The capability that is needed by the requesting jurisdiction
3. The types and amounts of resources needed including the number of response personnel (VDEM RHMO will determine the number of personnel required during the initial response phase of an incident)
4. The address and location of where the resource should report
5. The name of the official to whom the assisting personnel shall report, and tactical radio channels in use at the incident
6. State / EMAC mission number

LINE OF AUTHORITY:

1. When the Northern Virginia Hazardous Materials Response Team is activated, the team will operate under the supervision of the most qualified hazardous materials officer under incident command which will usually be the responding VDEM RHMO or another qualified person in the affected locality.
2. In the event there is a conflict in management or tactical decisions between the local authority, the VDEM RHMO, and the hazardous materials response team leader, or if the VDEM RHMO initiates or fails to initiate any action or decision that would jeopardize the safety of the hazardous materials response personnel or equipment, the hazardous materials response team leader shall have the authority to terminate the state response and return to their locality. There shall be no recourse against the Hazardous Materials Response Team leader, the hazardous materials team personnel, or to the City of Alexandria.

APPENDIX D COMPOSITE TEAMS

This appendix supplements the basic agreement in regards to the support the County of Arlington will provide to the composite hazardous materials response team led by the City of Alexandria.

The County of Arlington agrees to the following:

1. Provide 30 hazardous materials team members to be a part of the composite hazardous materials response team. As a minimum, 25 percent of the members must be certified to the Hazardous Materials Specialist level.
2. Ensure that persons designated for the composite team receive initial hazardous materials training as well as annual continuing education as prescribed by VDEM, and participation in quarterly and/or annual drills or exercises developed and sponsored by VDEM as defined in the basic agreement.
3. Provide a minimum of 10 hazardous materials team members to the composite team for each response that the City of Alexandria responds to at the request of VDEM, within 30 minutes of notification.
4. Provide an itemized statement of expenses incurred during an authorized response, limited to the conditions as outlined in the basic agreement.
5. Provide baseline and annual medical examinations for all team members and leaders as outlined in the basic agreement.
6. Access to team equipment and training records by the VDEM Hazardous Materials Program manager during normal business hours. A roster of team personnel will be furnished to the Program Manager on a semi-annual basis.
7. The County of Arlington reserves the right to refuse to respond to a VDEM request for a hazardous materials response if the City's team is already committed to emergency activities.

VDEM agrees to provide:

1. Provide Workers' Compensation coverage for the response team members as identified in the basic agreement during a state-activated response in accordance with the Workers' Compensation Act, but shall not include any supplement thereto normally provided to such employees by the County of Arlington under the same or similar circumstances.
2. Reimburse team expenses incurred during an authorized response directly to the County of Arlington within 30 days following receipt of an itemized statement of expenses as outlined in the basic agreement.

If the basic agreement is terminated in accordance with Section VII of the basic agreement, the provisions of this appendix are also terminated.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by the following duly authorized persons:

County of Arlington by: Mark J. Schwartz
Signature: Mark J. Schwartz Title: County Manager
Date: June 4, 2019

Virginia Department of Emergency Management by: _____

Signature: _____ Title: State Coordinator

Date: _____