

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF GREENSBORO AND GUILFORD COUNTY
REGARDING HAZARDOUS MATERIALS RESPONSE TEAM SERVICES**

This Agreement (the "Agreement" or "interlocal Agreement"), is entered into as of July 1, 2020, (the "Effective Date") by and between the **CITY OF GREENSBORO, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (hereinafter "City of Greensboro" or "City") on behalf of its Fire Department and **GUILFORD COUNTY, NORTH CAROLINA**, a public body politic and corporate (hereinafter "Guilford County" or "County") on behalf of its Emergency Services; collectively referred to herein as "the Parties."

WITNESSETH

WHEREAS, the COUNTY'S Board of Commissioners desires to provide the highest level of emergency services possible to the citizens of Guilford County in the most effective and efficient means possible; and

WHEREAS, the COUNTY has a limited capacity to respond with a hazardous materials response team to serve unincorporated areas in the COUNTY and its smaller towns; and

WHEREAS, the CITY maintains a hazardous materials response team to serve areas within its jurisdictional limits; and

WHEREAS, the COUNTY has responsibility for fire protection and hazard mitigation in all areas of Guilford County , with the exception of the City of Greensboro and City of High Point, and there exists a need to provide a team of competent personnel with adequate equipment and training to respond to emergencies involving chemical, hazardous, radioactive and other toxic or highly dangerous materials in areas under the jurisdiction of the COUNTY and the CITY that are in addition to the specific class of emergencies for the CITY's regional hazardous materials response team; and

WHEREAS, it is neither effective nor efficient for each unit of government to create and maintain the full response capacity required for response to such emergencies solely within its own jurisdiction, but it is both effective and efficient to provide for such responses within both jurisdictions using combined resources; and

WHEREAS, the CITY has such an existing hazardous material response capacity and is willing to provide hazardous material response services to and in the COUNTY; and

WHEREAS, the Parties, pursuant to the authority of Chapter 160A-461 *et seq.* of the North Carolina General Statutes, are authorized to enter into this Interlocal Agreement in order to pursue the above stated goals.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the CITY and COUNTY agree as follows:

ARTICLE I PURPOSE

- 1.01 The purpose of this Agreement is to define the rights and obligations of the COUNTY and CITY with respect to the delivery of hazardous materials response team services by CITY to COUNTY.

ARTICLE II COOPERATION

- 2.01 The COUNTY and CITY will cooperate and use their best efforts to ensure that the various provisions of this Agreement are fulfilled. The Parties agree in good faith to undertake resolutions of disputes, if any, in an equitable and timely manner and in accordance with the provisions of this Agreement.

ARTICLE III DEFINITIONS

- 3.01 **AGREEMENT.** "Agreement" means this document as approved by appropriate action through ordinance, resolution, or other method, pursuant to the ordinances, resolutions, or charter of the governing bodies of the County and City.
- 3.02 **CITY OF GREENSBORO MANAGER.** "City of Greensboro Manager" means the Manager of the City of Greensboro, duly appointed by the City of Greensboro Council.
- 3.03 **FIRE CHIEF.** "Fire Chief" means the Fire Chief of the City of Greensboro Fire Department, duly appointed by the City of Greensboro Manager.
- 3.04 **ES DIRECTOR.** "ES Director or Emergency Services Director" means the Guilford County Emergency Services Director, duly appointed by the County Manager.
- 3.05 **FISCAL YEAR.** "Fiscal Year" means the period commencing on July 1 of any calendar year and concluding on June 30 of the following calendar year.
- 3.06 **GFD.** "GFD" means the City of Greensboro Fire Department.
- 3.07 **GUILFORD COUNTY MANAGER.** "Guilford County Manager" means the Manager of Guilford County Government, duly appointed by the Guilford County Board of Commissioners.

ARTICLE IV TERM

- 4.01 INITIAL TERM. The term of this Agreement shall begin on the Effective Date and shall continue through June 30, 2023 (the "Initial Term").
- 4.02 RENEWAL TERM(S). Upon the expiration of the Initial Term, this Agreement shall automatically renew for up to three (3) additional one (1) year terms running concurrent with the fiscal year (July 1 - June 30), unless either Party terminates this Agreement in accordance with Article V.

ARTICLE V TERMINATION AND AMENDMENT

- 5.01 TERMINATION BECAUSE OF MATERIAL BREACH. If either Party materially breaches this Agreement; the other Party shall deliver written notice of the breach and request to cure. If such breach is not cured within thirty (30) days of the written notice thereof, the non-breaching Party may, without further notice or demand, in addition to all other rights and remedies provided in this Agreement, at law or in equity, terminate this Agreement and recover any damages to which it is entitled as a result of said breach.
- 5.02 TERMINATION UPON ONE (1) YEAR'S NOTICE. Either Party may terminate its participation in this Agreement, with or without breach, by giving written notice to the other Party of intent to terminate at least one hundred and eighty days prior to the termination date, or effective date of the renewal term.
- 5.03 TERMINATION UPON FAILING TO MAKE FINANCIAL COMMITMENTS. If either Party fails to properly authorize and appropriate any necessary financial commitments, including execution of an Amendment as required, the other Party may, but is not required, to deliver written notice of intent to terminate within thirty (30) days. The Parties agree to exercise good faith efforts to participate in the Amendment process. If the required Amendment is not executed, then the termination is effective upon the expiration of the thirty (30) days, unless extended by agreement of the Parties. This provision is intended to be used to ensure a pre-audited funding commitment from each party.
- 5.04 BANKRUPTCY/INSOLVENCY. If any Party applies for or consents to the appointment of a receiver, trustee or similar officer for it or any substantial part of its property or assets, or any such appointment is made without such application or consent by such Party and remains undischarged for sixty (60) days, or files a petition in bankruptcy or makes a general assignment for the benefit of creditors, then such action shall constitute a material breach of this Agreement not requiring notice and opportunity to cure, and the other Party may terminate effective immediately.
- 5.05 COOPERATION. In the event of termination pursuant to any subsection hereunder, the terminating Party shall **not** be relieved of any existing and unperformed obligations, including funding obligations, incurred up until the effective date of termination.

5.06 NON-EXCLUSIVE REMEDIES. No remedy provided in this Agreement shall be considered exclusive of any other remedy in law or in equity.

5.07 NOTICE. Any written or electronic notice required by this section shall be delivered to the Parties at the following addresses:

For City of Greensboro:

City Manager
City of Greensboro
Post Office Box 3136
Greensboro, NC 27402

With a copy to

City Attorney
City of Greensboro
Post Office Box 3136
Greensboro, NC 27402

For Guilford County:

Guilford County Manager
PO Box 3427
Greensboro, NC 27402

With a copy to

Guilford County Attorney
PO Box 3427
Greensboro, NC 27402

Notices shall be deemed delivered on the date sent if addressed as set forth herein. Either party may notify the other of a change of address, which will only be effective by written notice. As necessary, day to day communication may occur between the County and City. All issues of concern discussed by either party must be resolved within 30 business days or in a mutually agreed time in writing.

- 5.08 AMENDMENT. If any Party desires to amend the terms or conditions of this Agreement, then the proposed amendment and the reasons for the proposed amendment shall be communicated in writing to the other Party. If the Parties agree to the proposed amendment, then the amendment shall be effective by entering a written amendment to the Agreement. An amendment that does not change the substantive or financial commitments of the Agreement may be executed by the Guilford County Manager and the City of Greensboro Manager. Any other amendment to the terms of this Agreement to be effective must be in the form of a written instrument properly authorized and executed by the governing boards of each Party to this Agreement. Any amendment to this Agreement to be effective must be in writing and signed by both Parties.
- 5.09 This amendment shall be authorized and executed by the governing boards of the Parties, and pre-audited by the respective Finance Officers of each Party making a financial commitment.

ARTICLE VI PERSONNEL STATUS

- 6.01 FIRE CHIEF and all GFD personnel referred to in this Agreement shall be employees of the City, shall be under the direction and control of the City, and subject to all City personnel policies and ordinances. The City shall follow its standard procedures in employing GFD personnel.

ARTICLE VII VEHICLES AND EQUIPMENT

- 7.01 CITY shall be responsible for acquisition, maintenance and replacement of hazardous materials vehicles and equipment to support this agreement.

ARTICLE VIII ANNUAL PAYMENT OF SERVICES

- 8.01 The annual payment of services to be paid to the CITY by the COUNTY is for the CITY to maintain the readiness, appropriate manpower, available equipment and vehicles, and training of personnel to adequately respond and mitigate hazardous materials incidents outside of the CITY, but within the COUNTY jurisdiction.

- 8.02 In consideration of the above, the COUNTY shall pay to the CITY an annual retainer in the amount of \$30,000 payable in July of each contract year for the preparedness of their personnel and equipment capable of Hazardous Materials response. The COUNTY will agree to an annual increase of \$1,000 per annum.

**ARTICLE IX
PER INCIDENT PAYMENT OF SERVICES**

- 9.01 The per incident payment of services to be paid to the CITY by the COUNTY is to reimburse the CITY for when the following costs are incurred by the CITY as result of an actual incident that requires a hazardous materials team response:
- a. The COUNTY Fire Marshal's Office will bill the "responsible parties" under its fee schedule (Attachment 1) for all units and personnel assigned to the event, and then provide payment to the CITY for fee collected directly attributable to GFD's efforts. The COUNTY shall provide payment to the CITY within thirty days of receipt of the funds. If the restitution is delayed, then the COUNTY will be responsible for reimbursement for materials used on a response within forty-five (45) days of the incident date, and payment for response personnel and apparatus upon receipt.
 - b. If there is no known "responsible party" the COUNTY will pursue a state mission assignment through Guilford County Emergency Management, and consider options for Regional Response Teams coordinated through North Carolina Emergency Management.
 - c. For incidents that require the use of supplies and equipment that must be replaced to maintain program readiness, the CITY will invoice the COUNTY for the amount due, regardless of the incident duration, if not declared a state-funded mission. The COUNTY will attempt cost recovery through the responsible parties or their insurances.
- 9.02 Any per incident payment of services due to the CITY from the COUNTY as result of a hazardous materials response incident shall be separate and apart from the annual payments due to the CITY by the COUNTY pursuant to Article VIII of this Agreement.
- 9.03 The CITY shall notify the COUNTY of any reimbursement of the CITY from the State of North Carolina for any authorized regional hazardous materials team response in the COUNTY but outside the CITY's corporate limits. The CITY shall request STATE mission numbers for any incident that may be covered.
- 9.04 In no event shall the CITY receive compensation from the State of North Carolina and the County for the same services without reimbursing the COUNTY for the COUNTY's

proportional share of revenues qualifying for the reimbursement.

- 9.05 The City and the County shall each provide to the other any requested copies of documentation of payment or reimbursements of fees for services or expenses from a third party.

ARTICLE X SCOPE OF SERVICES

- 10.01 The CITY shall maintain a trained hazardous materials team and appropriate levels of supporting equipment and personnel.
- 10.02 The CITY shall allow designated COUNTY officials to activate the hazardous materials team for incidents occurring outside the CITY and within Guilford County. Requests for out of County requests, will go through normal state requests processes with North Carolina Emergency Management, but the CITY will not automatically respond out of the COUNTY. Additionally, the CITY and COUNTY will agree on dispatch and response configurations by incident type and computer aided dispatch call types.
- 10.03 The CITY shall utilize the National Incident Management System and supporting standard operating procedures when responding to hazardous materials incidents, provided that control of conditions associated with containment of hazardous material and directions for reduction of public exposure will be under the authority of the hazardous materials team.
- 10.04 The CITY shall ensure that GFD employees responding to COUNTY hazardous materials incidents are trained to the same level as they would for response within the CITY. This will include the response of a command officer to interface in a command posts to direct tactical hazardous materials operations.
- 10.05 The CITY shall assist, to the extent possible, in the identification of persons, or entities responsible for hazardous materials incidents so that COUNTY and/or the State of North Carolina may pursue collection of funds from the responsible parties.
- 10.06 The CITY shall designate a representative to meet and confer with COUNTY representatives to discuss the overall management of hazardous material response operations and to serve as a central point of contact with the COUNTY.
- 10.07 The CITY shall complete and submit a hazardous materials response form at the conclusion of each response to the COUNTY but outside the corporate limits of the CITY. Standard GFD NFIRS reporting is acceptable.
- 10.08 To the extent permitted by North Carolina law, the CITY shall defend, indemnify, and hold harmless the COUNTY from all loss, liability, claims, or expenses arising out of bodily injury, including death, to any person or persons or property damage caused solely by the negligence or willful misconduct of the CITY, except to the extent the same are caused

by the negligence or willful misconduct of the COUNTY. Notwithstanding the above, nothing herein shall be construed to be a waiver of the CITY'S defense of governmental immunity. Notwithstanding the foregoing, to the extent that CITY does not purchase a contract of insurance to meet this requirement, CITY shall not be deemed to have waived its governmental immunity as otherwise provided by law.

- 10.09 The COUNTY shall serve as the liaison between the CITY's hazardous materials response team and any responding agency within the COUNTY, so that in the event of an incident, a coordinated working relationship for the safety of the public and all personnel involved will be enhanced.
- 10.10 The COUNTY and CITY shall agree to participate in joint training sessions.
- 10.11 The CITY will have right of refusal of a mission during times of unusually high call volume or a major working incident, but will make all efforts to send resources when available and assist in coordination of a Regional Response Team through North Carolina Emergency Management.

ARTICLE XI COMPLAINTS AND APPEALS

- 11.01 Complaints from the parties to this Agreement shall be forwarded to the FIRE CHIEF or their designee, and the ES Director or their designee as soon as possible. Complaints should be arbitrated between the Fire Chief and ES Director. If resolution cannot be achieved, then they will be forwarded to the CITY and COUNTY Managers for final resolution.
- 11.02 The parties further agree not to take or support any action that would impair the delivery of hazardous materials services, including (but not limited to) actions that would unnecessarily slow the response of said services.

ARTICLE XII MODIFICATION

- 12.01 Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the parties hereto.

ARTICLE XIII RECORDS AND INSPECTION

- 13.01 The County and the City agree that each party hereto, will cooperate with the State, County, or municipal Auditor, or any of their duly authorized representatives, at any time during normal business hours; and further, that such auditor shall have access to, and the right to examine, audit, excerpt, and transcribe any books, documents, papers, and

- records, which are pertinent to the accounting practices and procedures of the other party hereto and involve transactions relating to this Agreement.
- 13.02 The County and the City agree to maintain all records relative to this Agreement during the period in which hazardous materials response services are used as defined in this Agreement, and for an additional period as prescribed by law, or absent such prescription, for five (5) years beyond the expiration date of the Agreement.
- 13.03 In the event that legislation is passed by either the United States Congress or the North Carolina General Assembly delimiting public access to the financial, operational, or other relevant records of public safety systems, the State, County, or municipal auditor conducting such review shall, to the extent permitted by law, agree to maintain as confidential any information or data permitted to be excluded from public access and review. Such protected information and data shall, to the extent permitted by law, not be included in written findings of an auditor nor discussed in any forum open to the public. The County Attorney, shall identify, in writing, the information or data excluded from public access and review, and shall provide the list of exclusions to each party to this Agreement and to the City Attorney of the City of Greensboro. The County and the City agree to include such restrictions in any public solicitations or contracts for audit services.

ARTICLE XIV DATA PRIVACY

- 14.01 City and County agree to abide by all applicable Federal and State laws and regulations and confidential information concerning individuals and/or data including, but not limited to information made non-public by such laws or regulation.

ARTICLE XV RELATIONSHIP OF PARTIES

- 15.01 Guilford County and the City of Greensboro are, and shall remain, independent contractors with respect to any service or function performed under this Agreement. Except as provided for in this Agreement, each Party shall select the means, method, and manner of performing their respective services herein. Each party is an independent contractor and shall not represent itself or be deemed as an officer, agent or employee of the other party for any purpose. Nothing under this Agreement is intended or should be construed in any manner to create a partnership or venture between the Parties.
- 15.02 Each party agrees that it will obey all State and Federal statutes, rules, and regulations which are applicable to any responsibility or duty outlined herein. The County represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any personnel of the County, the City, or other persons engaged in the performance of any work or services under this Agreement, shall have no contractual relationship with any other party, and shall not be employees of any other party. Such personnel or other persons shall neither require nor be entitled to any

compensation, rights, or benefits of any kind whatsoever from the other party, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Re-Employment Insurance, disability, severance pay, or retirement.

- 15.03 Any claims that might arise under the Unemployment Compensation Act, the Worker's Compensation Act of the State of North Carolina, or any other applicable Federal or State law, rule, or regulation on behalf of said personnel, arising out of employment or alleged employment, including, without limitation, claims of discrimination against either party, its officers, agents, contractors, or employees, shall in no way be the responsibility of the other party. To the extent permitted, and as limited by North Carolina law, each party shall defend, indemnify, and hold the other party, its officers, agents, and employees harmless from any and all such claims.

ARTICLE XVI NON-ASSIGNMENT

- 16.01 Neither party shall assign any portion of this Agreement or the rights and responsibilities hereunder to another person or entity who is not a party to this Agreement without the prior written consent of the other party to this Agreement.

ARTICLE XVII NON-APPROPRIATION

- 17.01 Guilford County and the City of Greensboro are governmental entities, and the Agreement validity is based upon the availability of public funding under the authority of their respective statutory mandates.
- 17.02 In the event that funds are not available and not appropriated to the program specified in this Agreement, then this Agreement shall automatically expire without penalty to either party.
- 17.03 In the event of a legal change in either party's statutory authority, mandate, and mandated functions which adversely affects the authority to continue performing obligations under this Agreement, then this Agreement shall automatically expire without penalty to either party.

ARTICLE XVIII NO THIRD-PARTY BENEFICIARIES

- 18.01 This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the Parties hereto, and shall not confer any rights or remedies upon any person or entity other than the Parties hereto.

ARTICLE XIX

NO WAIVER OF SOVEREIGN IMMUNITY

- 19.01 Nothing in this Agreement shall be construed to mandate purchase of insurance by Guilford County pursuant to N.C.G.S. 153A-435; or to be inconsistent with Guilford County's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or to **in** any other way waive either Party's defense of sovereign or governmental immunity from any cause of action alleged or brought against Guilford County or City of Greensboro for any reason if otherwise available as a matter of law.

ARTICLE XX NON-WAIVER OF QUALIFIED IMMUNITY

- 20.01 No officer, agent or employee of either Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

ARTICLE XXI ENTIRE AGREEMENT, MERGER, MODIFICATION

- 21.01 The entire Agreement between the parties is contained herein and that this Agreement supersedes all oral arguments, previous written agreements, and negotiations between the County and the City regarding hazardous materials response services. Notwithstanding the above, it is the intent of the parties that the rights and obligations of this Agreement shall be applicable solely to the hazardous materials response services outlined herein.
- 21.02 Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the parties hereto.

ARTICLE XXII SEVERABILITY

- 22.01 If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination shall not affect any other provision of this Agreement.

ARTICLE XXIII COUNTERPARTS

- 23.01 This Agreement may be executed in several counterparts, each of which shall be deemed an original.

ARTICLE XXIV NON-DISCRIMINATION

- 24.01 To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Agreement. The parties further agree, to the extent permitted by law, to conform with the provisions and intent of City of Greensboro Ordinance 1969-889, as amended. This provision is hereby incorporated into this Agreement for the benefit of the City of Greensboro and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Agreement.

ARTICLE XXV APPLICABLE LAW

- 25.01 All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Agreement shall be Guilford County Civil Superior Court or the United States District Court for the Middle District of North Carolina.
- 25.02 The County and the City agree to comply with all applicable Federal and State laws, as well as local ordinances relating to non-discrimination, affirmative action, public purchases, contracting, employment including worker's compensation and state labor wage provisions, and surety deposits required for construction contracts.

ARTICLE XXVI E-VERIFY

- 26.01 The Parties shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq.

ARTICLE XXVII IRAN DIVESTMENT

- 27.01 Any vendor hired by the City to perform work related to this agreement shall comply with the requirements of the Iran Divestment Act by certifying that 1) it does not appear on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4 and published on the State Treasurer's website at www.nctreasurer.com/Iran and 2) it will not utilize any subcontractor that appears on the Final Divestment List in the performance of duties under this Agreement.

ARTICLE XXVIII FORCE MAJEURE

- 28.01 Neither the County nor the City shall be liable for any failure, delay or interruption in service or for any failure or delay in the performance of any obligation under this Agreement due to strikes, walkouts, acts of God, governmental restriction, enemy action, civil commotion, unavoidable casualty, unavailability, or other similar acts beyond the reasonable control of either Party.

ARTICLE XXIX INCORPORATION OF DOCUMENTS/COMPLETE AGREEMENT

- 29.01 This Agreement, and any documents incorporated by reference, including specifically Exhibit 1 represents the entire Agreement between the parties and supersedes all prior oral or written statements or agreements between the parties for hazardous materials response team services for any incorporated or unincorporated area of Guilford County.
- 29.02 Specifically incorporated into this Agreement are the following attachments, or if not physically attached, are incorporated fully herein by reference:
- a. Exhibit 1 - Hazardous Materials Response Fees

In cases of conflict between this Agreement and any of the above incorporated attachments or exhibits, the terms of this Agreement shall prevail.

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IN WITNESS WHEREOF, intending to be legally bound hereby, and with the authority vested in them by resolution of their respective governing boards, the parties have caused this Interlocal Agreement to be executed and delivered as of the date first above written.

Signatories

Exhibit 1**HAZARDOUS MATERIALS AND CHEMICALS EMERGENCY RESPONSE**

Emergency Services		
Fee Information	Term	FY 2020
Hazardous Materials Response Fees		
<i>Equipment & Apparatus</i>		
Haz-Mat Response Unit		\$ 150.00
Engine		\$ 150.00
Tanker		\$ 150.00
Aerial unit		\$ 200.00
Squad/Truck (Medical or Brush)		\$ 100.00
Service Truck		\$ 100.00
<i>Personnel</i>		
Haz-Mat Technician	Per Hour	\$ 60.00
Haz-Mat Support	Per Hour	\$ 60.00
Chief Officer	Per Hour	\$ 75.00
Captain	Per Hour	\$ 75.00
Lieutenant	Per Hour	\$ 60.00
ES Support Staff	Per Hour	\$ 60.00
Firefighters	Per Hour	\$ 60.00