

RESOLUTION NO. 37
Series of 2017

A RESOLUTION APPROVING AN AMENDED AND RESTATED RECIPROCAL HAZARDOUS MATERIAL INCIDENT INTERGOVERNMENTAL AGREEMENT; AND SETTING FORTH DETAILS IN REGARD THERETO.

WHEREAS, the Town of Vail (the "Town"), in the County of Eagle and State of Colorado is a home rule municipal corporation duly organized and existing under the laws of the State of Colorado and the Town Charter (the "Charter");

WHEREAS, the members of the Town Council of the Town (the "Council") have been duly elected and qualified;

WHEREAS, Section 29-22-102(3) (a) and (b), C.R.S., requires that the governing bodies of every town, city and county designate an emergency response authority responsible for hazardous substance incidents occurring within the respective jurisdictions of the governing bodies;

WHEREAS, Section 18 (2) (a) and (2) (b) of Article XIV of the Colorado Constitution and Section 29-1-201, C.R.S., permit and encourage governments to enter into contracts to make the most effective use of their resources for the benefit of the public;

WHEREAS, hazardous materials incidents may arise in one or more jurisdictions, resulting in response demands that exceed the personnel, equipment and/or expertise of a single response agency;

WHEREAS, the Town and other local response agencies entered into a Regional Hazardous Materials Association of Eagle County Establishment and Reciprocal Hazardous Material Incident Intergovernmental Agreement, dated October 9, 2012, (the "Original IGA") for the purpose of establishing a separate governmental entity known as the Regional Hazardous Materials Association of Eagle County for purposes of conducting joint hazardous materials activities including without limitation, planning, information management, initial response, equipment procurement and sharing, personnel procurement and training, reimbursement and financial management as an operational group; and

WHEREAS, the Town wishes to enter into an amended and restated Intergovernmental Agreement (the "Amended IGA") with the other local response agencies which shall replace the Original IGA in its entirety.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO THAT:

1. The Amended IGA is hereby approved in substantially the same form attached hereto as Exhibit A and in a form approved by the Town Attorney.
2. This resolution shall take effect immediately upon its passage.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Vail held this 17th day of June, 2017.

Dave Chapin,
Mayor of the Town of Vail, Colorado

ATTEST:

Patty McKenny,
Town Clerk

EXHIBIT A

REGIONAL HAZARDOUS MATERIALS ASSOCIATION OF EAGLE COUNTY (RHMAEC)

AMENDED AND RESTATED REGIONAL HAZARDOUS MATERIALS ASSOCIATION OF EAGLE COUNTY ESTABLISHMENT AND RECIPROCAL HAZARDOUS MATERIAL INCIDENT INTERGOVERNMENTAL AGREEMENT ("IGA")

This IGA is made and entered into this _____ day of _____, 201__ by and between the Town of Vail, Eagle River Fire Protection District, Greater Eagle Fire Protection District, Gypsum Fire Protection District, and Eagle County, hereinafter referred to collectively as " Operational Members " or "Parties" and individually as "Operational Member" or "Party."

RECITALS

WHEREAS, Section 29-22-102(3) (a) and (b), C.R.S., requires that the governing bodies of every town, city and county designate an emergency response authority ("DERA") responsible for hazardous substance incidents occurring within the respective jurisdictions of the governing bodies; and

WHEREAS, Section 18 (2) (a) and (2) (b) of Article XIV of the Colorado Constitution and Section 29-1-201, C.R.S., permit and encourage governments to enter into contracts to make the most effective use of their resources for the benefit of the public; and

WHEREAS, Section 29-1-203, C.R.S., authorizes the State of Colorado and its political subdivisions to enter into contracts to provide functions or services, including the sharing of costs of such functions or services, which each of the Parties may be authorized to provide; and

WHEREAS, Section 29-22-103(3), C.R.S., encourages mutual aid agreements between emergency response authorities for the purpose of enhancing the response to hazardous substance incidents and establishing procedures for, among other things, utilizing equipment, sharing technical assistance and promoting the safe handling of hazardous substance incidents; and

WHEREAS, hazardous materials incidents may arise in one or more of the Parties' jurisdictions, resulting in response demands that exceed the personnel, equipment and/or expertise of that particular Party; and

WHEREAS, the Parties entered into a Regional Hazardous Materials Association of Eagle County Establishment and Reciprocal Hazardous Material Incident Intergovernmental Agreement, dated October 9, 2012, (the "Original IGA") for the purpose of establishing a

separate governmental entity known as the Regional Hazardous Materials Association of Eagle County ("RHMAEC") for purposes of conducting joint hazardous materials activities including without limitation, planning, information management, initial response, equipment procurement and sharing, personnel procurement and training, reimbursement and financial management as an operational group; and

WHEREAS, the Parties wish to enter into this IGA, which shall replace the Original IGA in its entirety; and

WHEREAS, the Parties wish to facilitate participation in such joint hazardous materials activities by other agencies and entities with capabilities or responsibilities related to hazardous materials activities, which other agencies and entities, upon joining the RHMAEC as provided herein shall be known as "Advisory Members," and which along with the Operational Members, shall be referred to collectively as "RHMAEC Members"; and

WHEREAS, to receive the RHMAEC Members resource(s), it is cost effective for each of the RHMAEC Members to make available during a hazardous materials incident, its own resources to other affected RHMAEC Members; and

WHEREAS, it is in the best interests of the public and each RHMAEC Member to have access to hazardous materials response resources of other RHMAEC Members to supplement their own resources during a hazardous materials incident; and

WHEREAS, establishment of the RHMAEC will serve a public purpose and will promote the safety, security, and general welfare of the inhabitants within all the participating Parties' jurisdictions;

NOW, THEREFORE, in consideration of the mutual benefits that will inure to the public and the Parties, and the mutual covenants by and between each of the Parties, it is agreed as follows:

1. Establishment of RHMAEC. The Regional Hazardous Materials Association of Eagle County ("RHMAEC") is hereby established as a separate governmental entity, in accordance with Section 18 (2) (a) and (2) (b) of Article XIV of the Colorado Constitution and Section 29-1-201, *et seq.*, C.R.S.
2. Purpose. This IGA is entered into for the express purpose of creating RHMAEC and the mutual cooperation between the RHMAEC Members for hazardous substance response planning, and in the event of the occurrence of hazardous substance incidents it is intended to provide for the planning and initial emergency action necessary to minimize the effects of the hazardous substance incidents under Article 22 of Title 29, C.R.S. (DERA function). The Operational Members have entered into this IGA and agree to participate in RHMAEC in reliance upon the rights, obligations and immunities conferred upon them by these statutes. In pursuing its DERA support functions, RHMAEC shall exist for the purposes of coordinated planning, information management and reporting, training, education, coordination, rapid deployment of qualified personnel and proper equipment for pre- and initial hazardous substance emergency action and

the financial management necessary to achieve the purposes of the IGA and minimize the effects of hazardous substance incidents within Eagle County. This IGA is not intended to, nor shall it be construed to, affect or extend the legal responsibilities of any RHMAEC Member except as expressly provided herein; create or extend any legal rights to any person from any RHMAEC Member that do not otherwise exist in the absence of this IGA; or, to waive any claims which may arise as a result of a hazardous materials incident, including claims for reimbursement from persons responsible for hazardous substance incident or from any emergency response funds created under state or federal law.

3. Definitions. As used herein the terms "hazardous material incident" and "hazardous substance incident" shall be synonymous and shall have the same meaning as provided in Section 29-22-101(2), C.R.S., as amended from time to time.
4. RHMAEC Members. There shall be two categories of membership in RHMAEC.
 - A. Operational Members. Parties to this IGA shall be Operational Members of RHMAEC. Each Operational Member shall name one primary representative as a full voting member of the Board of Directors of RHMAEC. Each Operational Member may also designate an alternate for the purpose of attending meetings and voting in the absence of the designated primary representative. Operational Member representatives shall comprise the RHMAEC Board of Directors.
 - B. Advisory Members. All other members of RHMAEC shall be designated as Advisory Members; RHMAEC shall include representatives ("Advisory Members") from interested or involved groups as such representatives are available. A representative from the Eagle County LEPC can be involved as member at this level.
5. Board of Directors. A Board of Directors consisting of the designated primary representatives of the Operational Members shall govern the business and affairs of RHMAEC (the "RHMAEC Board of Directors"). Officers of RHMAEC shall be elected from among the Operational Members' primary representatives or in the case when no Operational Member is available to fill the role of Secretary a representative of the Advisory Members may be appointed to the position of Secretary by a majority of the Board, as provided in the Bylaws. The elected Treasurer of RHMAEC shall have the primary responsibility of ensuring proper management of the financial resources of RHMAEC with oversight by the RHMAEC Board of Directors as further provided in the Bylaws;
6. Bylaws. The RHMAEC Board of Directors shall, by two-thirds (2/3) vote, enact and from time to time amend bylaws ("Bylaws") to govern the organization and operation of RHMAEC.
8. DERA Responsibilities. Nothing in this IGA shall be deemed to alter the authority of any existing DERA pursuant to Section 29-22-102(3), C.R.S., except for coordination of cost reimbursement as described herein. A response by RHMAEC team(s) and equipment to a hazardous substance incident under this IGA shall be under the operational control of the DERA, and shall not alter the responsibility of the DERA in whose jurisdiction the incident occurs to

command the response. All Parties hereto hereby delegate to RHMAEC their DERA authority to seek cost reimbursement for hazardous substance incidents involving a response by RHMAEC teams or equipment.

9. Cost Reimbursement. Whenever a response to a hazardous substance incident involves RHMAEC team(s) or equipment, the Parties agree that RHMAEC shall function as coordinator of claims for reimbursement of costs incurred by all responding RHMAEC Members (including the DERA). The RHMAEC Board of Directors shall adopt procedures for preparing and submitting requests for cost reimbursement and allocation of reimbursement revenue. In conjunction with these policies RHMAEC Members will use their previously approved Cooperator Resource Rate Forms (CRRF) outlined through the Colorado State Forest Service (CSFS) for all billing. The RHMAEC shall timely submit the coordinated claim on behalf of itself, the DERA and the responding RHMAEC Members. Should such reimbursement proceeds be less than the total costs of all RHMAEC Members (including the DERA) involved in the incident response, reimbursement to all such RHMAEC Members (including the DERA) shall be reduced in a proportionate manner. Unreimbursed costs incurred by RHMAEC team(s) or equipment shall be absorbed by the RHMAEC Members involved in the incident. Any reimbursement of costs coordinated by RHMAEC shall follow the rules for reimbursement ("Rules") as promulgated by Colorado Department of Public Safety pursuant to Section 29-22-104 (6)(a), C.R.S. Claims for reimbursement shall be submitted to RHMAEC within 24 days following the date the incident scene is declared safe by the DERA. All Parties to this IGA and all Planning Members, by participating in RHMAEC waive any rights to seek reimbursement for an incident for which RHMAEC has been delegated reimbursement authority, except through RHMAEC, and authorize RHMAEC to settle and compromise any claim for reimbursement following procedures adopted by the RHMAEC Board of Directors.

10. Response Area. It is the intent of the Parties that the primary response area of RHMAEC shall be limited to Eagle County. Upon written agreement signed by two-thirds (2/3) of the RHMAEC Board of Directors, RHMAEC may enter into agreements to provide assistance outside Eagle County upon request.

11. RHMAEC Response. Whenever the DERA determines that a hazardous substance incident within its jurisdiction requires RHMAEC resources, a request for RHMAEC assistance shall be made. Upon receiving a request for assistance, RHMAEC will provide the requested resources to the location of the hazardous substance incident in accordance with RHMAEC Policies and Best Practices. For the duration of the hazardous substance incident, the responding RHMAEC Member personnel shall defer to the DERA for designation of Incident Commander.

12. Funding and Property. Operational Member contributions shall be determined by agreement among the Parties for the initial funding in 2002. For each subsequent year, Operational Membership contributions will be made on an annual basis and shall be proposed by the RHMAEC Board of Directors. All budget proposals are subject to formal approval by the governing body of each individual Operational Member. Operational member contributions will be based upon a percentage of one quarter of one percent of the previous years' operating budget of each Operational member excluding items listed in Exhibit A. The procedures for budgeting, setting contributions and approvals by the governing body of each Operational Member shall be

detailed in the adopted Bylaws. It is the intent of the Parties that financial support of RHMAEC functions and equipment, as well as reliance on RHMAEC equipment and expertise, shall be shared among the Parties. To the extent possible, RHMAEC shall at all times operate as an enterprise pursuant to Article X, Section 20 of the Colorado Constitution.

13. Insurance. Each Party shall at its own expense, keep in full force and effect, during the term of this IGA, liability insurance on any equipment or rolling stock they own or lease in accordance with the Colorado Revised Statutes. Personal Liability and/or Public Officials insurance will be provided by RHMAEC for all members of the RHMAEC Board of Directors.

14. Hazardous Substance Incident Response. It is anticipated that initial responses to hazardous substance incidents shall be through the resources and equipment of the individual Operational Members responding separately but acting in concert and cooperation. Operational Members may request RHMAEC resources, which resources may consist of individuals from various Operational Members and equipment funded by RHMAEC.

15. Employees of RHMAEC Members. When providing any services pursuant to this IGA, including responding to a hazardous materials incident and providing services in furtherance of the DERA under this IGA, employees of RHMAEC Members shall at all times remain and act as employees of their respective RHMAEC Member, subject to the terms of this IGA. RHMAEC Members shall remain responsible for the compensation, benefits and insurance of such employees at all times.

16. Termination. Any Operational Member may terminate or withdraw from this IGA for any or no reason upon ninety (90) days advance written notice to the RHMAEC Board of Directors. Such written notice shall serve as a formal amendment to this IGA and negate the need for further amendment. Any Operational member choosing to withdraw from RHMAEC shall be responsible for their annual contribution commitment after the start of each fiscal year. Any dues, donations or other contributions owing at the time of withdrawal shall be paid prior to withdrawal. Any Advisory Member may withdraw at any time upon written notice to the RHMAEC Board of Directors, subject to the same reimbursement rights and obligations. Upon withdrawal from RHMAEC, the Operational member shall surrender all critical items such as gas detectors and hazmat suits, unless a written request to retain said equipment has been submitted and approved by the RHMAEC Board of Directors.

17. Additional Operational Members. Agencies desiring to join RHMAEC as Operational Members subsequent to its organization shall execute a copy of this IGA and a separate agreement with the RHMAEC Board of Directors that adheres to the policies and principles herein, and pay accumulated dues, capital contributions or other assessments as determined at the discretion of the RHMAEC Board of Directors. Such agreements related to joining RHMAEC as an Operational Member shall be approved by a majority vote of the RHMAEC Board of Directors. Upon delegation of an Operational Member's DERA authority to another entity, such entity shall become an Operational Member upon executing such agreements and approval by the RHMAEC Board of Directors.

18. Governmental Immunity. Nothing in this IGA shall be construed as a waiver of the limitations on damages, or as a waiver of the privileges, immunities, or defenses provided to, or enjoyed by, any of the RHMAEC Members under common law or pursuant to statute including, but not limited to, the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S. and Sections 24-32-2604, *et seq.*, C.R.S.

19. Worker Compensation and Pension Benefits. Pursuant to Sections 29-5-109, and 29-5-110, C.R.S., and this IGA, if any personnel of a responding RHMAEC Member is injured, disabled, or dies as a result of performing services within the boundaries of another jurisdiction, said individual shall remain covered by, and eligible for, the workers' compensation and pension benefits, including disability, death, and survivor benefits, to which the individual would otherwise be entitled if the injury, disability, or death had occurred within the jurisdictional boundaries of the responding RHMAEC Member.

20. Prior Agreements. The terms of this IGA shall supersede the terms of any pre-existing agreements between RHMAEC Members regarding responses to hazardous substance incidents and actions or responsibilities, except for incidents that do not require the assistance of other RHMAEC Members or RHMAEC. This IGA shall not affect or supersede any other agreements, including mutual aid agreements between RHMAEC Members.

21. Whole Agreement. This IGA embodies the whole agreement between the Parties regarding responses to hazardous substance incidents and actions or responsibilities under Emergency Planning and Community Right-to-Know Act, except for incidents that do not require the assistance of other RHMAEC Members or RHMAEC, and there are no inducements, promises, terms, conditions or other obligations made or entered into by the Parties other than those contained herein.

22. Successors and Assigns. This IGA shall be binding upon the Parties hereto, their respective successors or assigns, but may not be assigned by any Party without the express written consent of the other Parties.

23. Severable. All terms contained in this IGA are severable and in the event that a court of competent jurisdiction shall hold any of them invalid, this IGA shall be interpreted as if such invalid term or condition is not contained herein.

24. Authorization. The signatories to this IGA affirm and warrant that they are fully authorized to enter into and execute this IGA, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this IGA have been made.

25. Amendment. This IGA may be amended from time to time by written IGA duly authorized by all the Parties to this IGA. No modification or waiver of this IGA or any covenant, condition or provision contained herein shall be valid unless in writing and duly executed by all Parties.

26. No Third Party Beneficiaries. This IGA does not and shall not be deemed to confer upon or grant to any third party any right enforceable at law or equity arising out of any term, covenant, or condition herein or the breach thereof.

27. Recording. This IGA, or a memorandum of this IGA, may be recorded in the records of the Eagle County Clerk and Recorder.

28. Effective Date. This IGA shall be effective upon approval by each of the Operational Members named herein, as evidenced by such duly passed resolution, ordinance or other appropriate authorization of each, and the execution of this IGA by the Operational Members' authorized representatives.

WHEREFORE, the duly authorized representatives of Operational Members hereto have executed this Reciprocal Hazardous Material Incident Intergovernmental Agreement effective as of the date and year first written above.

Vail Fire and Emergency Services

Date

Eagle River Fire Protection District

Date

Greater Eagle Fire Protection District

Date

Gypsum Fire Protection District

Date

Eagle County Sheriff

Date

COUNTY OF EAGLE, STATE OF
COLORADO, by its Board of County Commissioners

By: _____
Chair

ATTEST:

Clerk to the Board

EXHIBIT A

The following items shall be excluded when determining individual Operational Member contributions to the RHMAEC budget:

- HR
- Finance
- Legal
- Payroll Services
- Treasurer
- Capital
- Cash Balance
- Board of Director Fees
- Elections
- Debt Service
- Information Technology
- Grants