

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: CEO / OES Fire Warden G. Hunsley

BOARD AGENDA # *B-5

Urgent

Routine

AGENDA DATE June 10, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the Memorandum of Understanding Between Stanislaus County and Westport Fire Protection District Regarding the Use of a Breathing Air Support Unit Purchased by the Stanislaus County Fire Warden's Office

STAFF RECOMMENDATIONS:

1. Approve the Memorandum of Understanding outlining terms of use of equipment belonging to the Stanislaus County Fire Warden's Office by the Westport Fire Protection District.
2. Direct the CEO or his designee to sign and execute the Memorandum of Understanding for the use of the Fire Warden's equipment.

FISCAL IMPACT:

The Fire Warden's Office purchased the breathing air support unit with Public Facilities Fees in June, 2007 to support all fire agencies in the County. On going costs for regularly scheduled maintenance of the equipment, pursuant to manufacturer's instructions, shall be borne by the Fire Warden's Office, through the County Fire Service Fund. The estimated annual cost for maintenance is \$7,500 which has been included in the budget.

BOARD ACTION AS FOLLOWS:

No. 2008-420

On motion of Supervisor Grover, Seconded by Supervisor DeMartini
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

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DISCUSSION:

The Stanislaus County Fire Warden's Office provides support and coordination for all fire agencies in the County. Coordination of efforts, equipment, and resources is achieved through our office with a cooperative approach including all County fire agencies. In an era of tighter budgets, striving to achieve increased efficiency and effectiveness through regional approaches has become more important than ever.

The fire agencies in Stanislaus County responded to over 42,000 emergency calls in 2007, with a proportional number of multiple and greater alarm fires requiring the use of breathing air support. The increased use of self contained breathing apparatus (SCBA), results in an increased need to refill the air cylinders that are part of the equipment. Many fire agencies in Stanislaus County depended on a mobile breathing air support unit purchased by Stanislaus County in 1989, which is maintained by Stanislaus Consolidated Fire (SC81). It was intended to be a regional resource to support all fire agencies throughout the County. However, this one unit is was no longer sufficient to support the increased demand in Stanislaus County. Not all agencies can afford to purchase and maintain a mobile breathing air support unit, nor is it reasonable for every agency to have one. To enhance the capabilities for filling air cylinders, a mobile trailer was purchased with Fire Warden's Public Facilities Fees in 2007.

This mobile trailer is engineered and equipped with an air containment fill station to provide the capability for re-filling air cylinders. This will allow firefighters the ability to sustain initial attack operations on an incident, and to work in extended operational periods on those incidents. Additionally, it has a light tower which will provide on scene lighting at any emergency incident. A trailer is the most practical method for transporting the breathing air compressor because virtually all departments have a vehicle to tow it, allowing easier deployment of the resource.

The Fire Warden's Office does not have the facilities to house this unit, nor the staff and equipment to deploy it, therefore, is requesting the ability to enter into a memorandum of understanding (MOU) with the Westport Fire Protection District to do so. The District will house, maintain and respond to emergency incidents, both in their district or in any other districts when requested.

This MOU will serve as a template for future agreements with fire agencies to house and deploy County equipment purchased by the Fire Warden's Office. The Fire Warden is requesting the Board's approval of the agreement, and authority for the CEO or his designee to sign it.

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POLICY ISSUES

Approval of this Memorandum of Understanding will enhance the Board's priorities of a safe community and a healthy community and effective partnerships.

STAFFING IMPACTS

There is no staffing impact associated with this item.

**MEMORANDUM OF UNDERSTANDING BETWEEN STANISLAUS
COUNTY AND WESTPORT FIRE PROTECTION DISTRICT,
REGARDING TEMPORARY USE OF EQUIPMENT PURCHASED BY THE
STANISLAUS COUNTY FIRE WARDEN'S OFFICE**

PURPOSE OF MEMORANDUM:

This Memorandum of Understanding (MOU) is entered into by the parties named above to establish the terms under which a qualifying local public entity or agency may be allowed the temporary use of equipment purchased by the Stanislaus County Fire Warden's Office. The County may, in its sole discretion, allow local public entities or agencies to retain such equipment to prepare for and meet the needs of the Emergency Preparedness Responders in Stanislaus County and retain supplies for the same purpose, pursuant to this MOU. This MOU states the terms and conditions under which a qualifying local public entity or agency may use property acquired and owned by the Stanislaus County Fire Warden's Office.

THEREFORE, the Stanislaus County Fire Warden's Office, located at 3705 Oakdale Road, Modesto, California, and Westport Fire Protection District, located at 5160 South Carpenter Road, Modesto, California, in consideration of the mutual undertakings and conditions set forth below, will abide by this MOU, and do hereby agree as follows:

Part 1 - Definitions

As used in this Memorandum of Understanding, the following definitions apply:

- 1.0 "Actual Emergency" means an occurrence either human caused or by natural phenomena, that requires action by emergency service personnel to prevent or minimize loss of life or damage to property and/or natural resources.
- 1.1 "Agreement" means this Memorandum of Understanding between the Stanislaus County Fire Warden's Office and the "USER", as defined in §1.5 of this Part. The word "Agreement" is intended to be used interchangeably in reference to this Memorandum of Understanding, or MOU.
- 1.2 "Equipment" means any tangible thing purchased by the Stanislaus County Fire Warden's Office, with a depreciable life in excess of one (1) year and intended for relatively long-term use.
- 1.3 "Property" means "equipment" or "supplies" as defined in this Part, to be utilized by the USER, owned by the Stanislaus County Fire Warden's Office, and listed with respect to USER in the "Property Schedule" attached to this Agreement.
- 1.4 "Supply" or "supplies" means any tangible thing purchased under the program with a relatively short usable life or period until expiration, or which is consumable under ordinary conditions of use.

- 1.5 "Utilize" in all its forms and tenses, means the privilege of temporary: 1) Possession; 2) control over; and 3) operation of, property furnished to the USER, granted by the Stanislaus County Fire Warden's Office.
- 1.6 "USER" means the government, public entity or public agency with whom the Stanislaus County Fire Warden's Office enters into this agreement.

Part 2 - Term of the Agreement and Voluntary Termination

- 2.0 This Agreement is made this 13th day of May, 2008.
- 2.1 This agreement is to remain in full force and effect from the day of its execution, binding on both parties, for an indefinite period so long as USER utilizes any property furnished to it by the Stanislaus County Fire Warden's Office.
- 2.2 The Stanislaus County Fire Warden's Office reserves the right to terminate this agreement, the utilization of all property by USER under it, or the utilization of any item or items of property under it, upon 30 days notice to USER at its location given above. The Stanislaus County Fire Warden's Office will pick up all property furnished to USER within 7 days notice. The cost of such pick-up shall be borne by the Stanislaus County Fire Warden's Office. It is understood that supplies with a relatively short usable life period may have been consumed by USER and cannot be returned to the Stanislaus County Fire Warden's Office.
- 2.3 USER may terminate this agreement at any time by performing any of the following acts, or a combination of them.
 - 2.3.0 Delivering all property furnished to USER by the Stanislaus County Fire Warden's Office under this agreement to the facility from which it was obtained, after giving the Stanislaus County Fire Warden's Office notice in a reasonable manner, no less than 30 days before USER delivers the property. The cost of such delivery or shipment shall be born by USER.
 - 2.3.1 Notifying the Stanislaus County Fire Warden's Office in writing no less than 30 days before it intends to cease utilizing the property. USER is requested to return the property to the Stanislaus County Fire Warden's Office and USER shall bear the cost of such retrieval or shipment.

Part 3 - Performance

3.0 Housing, Maintenance, Repair and Replacement. During the term of this agreement, USER agrees to adequately house in a enclosed secure structure, staff, operate, maintain and repair said EQUIPMENT (hereinafter collectively referred to as "the EQUIPMENT") at its sole cost and expense, except as otherwise expressly provided in this agreement. EQUIPMENT shall be housed on property of the User in a manner to provide reasonable protection against inclement weather, sabotage, theft or malicious damage. EQUIPMENT shall be maintained in such condition that it is available for immediate emergency use, and at the same standard as other emergency apparatus operated by USER. Maintenance shall include care of hose, batteries, tires, appliances, lubrication and fuel, general cleaning and polishing, minor body repairs and periodic testing,

3.1 USER hereby understands and agrees that it may only utilize the property owned by the Stanislaus County Fire Warden's Office and furnished to USER under the program and this Agreement. Utilization of property by USER passes no title from the Stanislaus County Fire Warden's Office to USER. This Agreement states the terms and conditions under which USER may use property acquired and owned by the Stanislaus County Fire Warden's Office under the program, and the entire Agreement is in the nature of a bailment.

3.2 All property shall be utilized under this Agreement for the sole purpose of preparing for, responding to "actual emergencies", and meeting the needs of the Fire Districts and Departments in Stanislaus County.

3.3 USER shall be financially responsible to and reimburse the Stanislaus County Fire Warden's Office for the loss or destruction of all or any item of equipment, or damage caused by an act of negligence on the part of the USER. USER shall be financially responsible to the Stanislaus County Fire Warden's Office for the willfully negligent or intentional loss or destruction of supplies, but not for the normal utilization of supplies in the course of carrying out §3.1.

3.4 All equipment shall be maintained in good working order and be reasonably protected by USER from damage or theft. Such care and maintenance are the sole financial responsibility of USER.

3.5 All regularly scheduled maintenance of equipment pursuant to manufacturers' instructions shall be performed by USER. The financial responsibility shall be borne by the Stanislaus County Fire Warden's Office. Costs incurred during training periods shall be borne by both parties on a set schedule unless training is specifically requested by the Stanislaus County Fire Wardens' Office.

3.6 All supplies shall be stored according to manufacturers' instructions so as to avoid undue spoilage or unnecessary waste. USER shall also take reasonable steps to protect supplies from theft or pilfering.

- 3.7 The Stanislaus County Fire Warden's Office shall furnish USER with all manuals, instructions, schedules, diagrams, and like documents or copies thereof, and any special tools or auxiliary apparatus accompanying the property from the manufacturer, needed to carry out the requirements of sections 3.1, 3.3, 3.4, and 3.5. The Stanislaus County Fire Warden's Office shall replenish the supplies expended when used on "actual emergencies". The USER shall replenish any supplies expended when used for their own purposes, at USER's expense.
- 3.8 At the discretion of the Stanislaus County Fire Warden's Office and upon no less than 5 days notice, USER may be required to relinquish and transfer or allow to be transferred any property it utilizes pursuant to this Agreement to another public entity or agency or to the Stanislaus County Fire Warden's Office, for the other entity's temporary or permanent use, utilization, or other disposition (hereafter referred to as a "SECONDARY USER"). USER is required to repair or restore any equipment to the full operational condition it was received in from the Stanislaus County Fire Warden's Office before it is transferred under this section unless otherwise instructed by the Stanislaus County Fire Warden's Office.
- 3.8.0 Any cost incurred by USER in transferring property under section 3.8, such as shipping or transportation costs, shall be reimbursed by the Stanislaus County Fire Warden's Office. The Stanislaus County Fire Warden's Office shall not reimburse USER for any repair or restoration required under section 3.8.
- 3.9 In the case of a transfer of equipment directed by the Stanislaus County Fire Warden's Office under §3.8 in response to an "actual emergency," USER need not repair or restore equipment to its full operational condition before transfer..
- 3.9.0 Notice will not be required of the Stanislaus Fire Warden's Office to direct a transfer of property under §3.8 in case of an "actual emergency."
- 3.9.1 An assignment of the EQUIPMENT or any portion thereof by USER for any period not exceeding seven consecutive days may be made with the consent of the Stanislaus County Fire Warden, providing that at the time such EQUIPMENT is received, such assignee is a signatory to the same MOU as the USER.
- 3.10 USER will at times be requested to utilize property under this Agreement in mutual aid to a different public entity or jurisdiction outside of its own, by the Stanislaus County Fire Warden's Office. The Stanislaus County Fire Warden's Office hereby authorizes the utilization of property in an "actual emergency" outside of USER's jurisdiction pursuant to a duly enacted mutual aid agreement.
- 3.10.0 Upon notification to the Stanislaus County Fire Warden's Office, USER shall not be required to transfer any property under §3.8, or utilize any property under §3.10, if in either instance it would substantially impair USER's ability

to respond to an imminent threat in its own jurisdiction or pursuant to its own operations, or would otherwise pose a threat of serious bodily harm or death.

- 3.10.1 No person other than the Fire Warden of the Stanislaus County Fire Warden's Office, or his/her designee, shall have authority to order USER to effectuate a relinquishment or transfer of property under §3.8, or make a request by the Stanislaus County Fire Warden's Office under §3.10.
- 3.11 USER shall not modify or alter any property, except that USER may have parts replaced or minor modifications made to equipment to effectuate §§3.4 and 3.8. No repairs or modifications shall cause property to perform below manufacturer's standards, nor void the manufacturer's warranties. Normal wear and tear shall not be considered a modification or alteration, nor the expiration of usefulness of supplies with a limited shelf life due to age, nor the consumption of supplies authorized by the terms of this Agreement. User shall have the ability to provide training on the specified piece of equipment to partnering agencies.
- 3.12 Any license, certificate, or permit required by the federal, state, county, or municipal government required for the utilization of any property shall be maintained or obtained by USER. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, operator's permits, professional licenses, business licenses, and organizational accreditation certificates.
- 3.13 Reasonable and continual training shall be carried on so that trained personnel shall at all times be available to staff and operate said apparatus.
- 3.14 Neither the County nor the Stanislaus County Fire Warden's Office is responsible or liable for reimbursement to the USER for use of the Equipment during any response. The Fire Warden's Office will submit a request for reimbursement for appropriate costs to the responsible party; provided, however, the County has no obligation to take any action, by legal process or otherwise, to ensure payment of a claim. All reimbursements submitted on behalf of the USER will use the California Fire Assistance Agreement as the guide for the reimbursement rates and, if the USER has not supplied State OES with the USER's current rates, the default rate will be used to calculate the reimbursement for the response.

Part 4 - Audits, Reports, Records, and Monitoring Procedures

- 4.0 USER agrees that the Stanislaus County Fire Warden's Office, or any of its duly authorized representatives at any time during normal business hours, and as often as deemed necessary, shall have access to, and the right to examine and inspect any property.
- 4.1 USER shall report any loss or destruction of equipment to the Stanislaus County Fire Warden's Office immediately, and the cause of such loss or destruction that can be ascertained within a reasonable time.

- 4.2 USER shall report any damage to equipment to the Stanislaus County Fire Warden's Office that requires USER to have an independent contractor or another public entity repair the damage. In any event, USER shall notify the Stanislaus County Fire Warden's Office immediately of any damage to equipment that makes the equipment unavailable for use.
- 4.3 USER shall report damage to or destruction of supplies to the Stanislaus County Fire Warden's Office, and shall report the cause of such damage or destruction that can be ascertained within a reasonable time. The expiration of usefulness of supplies with a limited shelf life due to age, or the consumption of supplies authorized by the terms of this agreement, shall not constitute "damage or destruction" within the meaning of this section.
- 4.4 USER shall report any equipment that has become obsolete due to age or functionality, to the Stanislaus County Fire Warden's Office. The Stanislaus County Fire Warden's Office has the sole discretion on whether to destroy or distribute the equipment, and if the equipment is to be distributed, where the equipment will be released to. Equipment declared obsolete shall not constitute "damage or destruction" within the meaning of this section.
- 4.5 USER shall maintain all books and documents relevant to this Agreement.

Part 5 - Agency, Indemnity, and Insurance

- 5.0 This Agreement creates no agency relationship between the parties, nor that of joint ventures. The Stanislaus County Fire Warden's Office is not responsible for USER's acts or omissions with regard to property utilized recklessly, negligently, or intentionally in violation of law, and USER shall defend and indemnify the Stanislaus County Fire Warden's Office against any and all actions at law and equity arising there from.
- 5.1 USER, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of the Stanislaus County Fire Warden's Office. Except as expressly provided in this Agreement, USER has no authority or responsibility to exercise any rights or powers vested in the Stanislaus County Fire Warden's Office. No agent, officer, or employee of the Stanislaus County Fire Warden's Office is to be considered an employee of USER.
- 5.2 USER shall procure and maintain in force a business auto liability insurance policy with minimum coverage levels of one million (\$1,000,000) dollars per occurrence with a combined limit of three million (\$3,000,000) dollars for bodily injury liability and property damage liability, on any equipment that is a motor vehicle during any period in which it utilizes such equipment, or add a rider naming the assigned piece of equipment to current insurance, including theft, being in place at the USER'S District or Department. USER shall be solely financially responsible for the payment of premiums under any such insurance policies required.

- 5.2.0 The Stanislaus County Fire Warden's Office shall supply USER with a Certificate of Bailment for motor vehicle equipment it utilizes, stating that the Stanislaus County Fire Warden's Office has title to such equipment, USER has dominion and control over the equipment for limited purposes, and USER has standing and authority to insure the equipment.
- 5.3 USER and any other responsible party shall hold harmless, defend, and indemnify the Stanislaus County Fire Warden's Office against any legal claim or action claiming damage, contamination, or the threat thereof.
- 5.4 As owner, the Stanislaus County Fire Warden's Office shall be the sole beneficiary of any warranties, rebates, and refunds on property.
- 5.5 Neither party, nor any of its officers or employees, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the other party under or in connection with this agreement. The parties further agree, pursuant to Government Code Section 895.4, that each party shall fully indemnify and hold harmless the other party and its agents, officers, employees, volunteers, from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any action delegated to or action taken or omitted to be taken by such party under this agreement.

Part 6 - Assignment, Integration, Jurisdiction

- 6.0 This Agreement is not assignable by USER. USER agrees not to transfer, lend, lease, or purport to assign any property under this Agreement to any person or entity without express permission of the Stanislaus County Fire Warden's Office.
- 6.1 This Agreement or MOU is the whole agreement between the Stanislaus County Fire Warden's Office and USER and no modification or waiver shall be binding unless made in writing, signed by both parties. This Agreement will become binding on the Stanislaus County Fire Warden's Office and USER when signed by both parties.
- 6.2 This Agreement shall be governed by the laws of the State of California. In the event either party to this Agreement commences an action, at law or in equity, the prevailing party in such action shall be entitled to reasonable attorney's fees as well as other judgments in its favor.

Part 7 - Notices

7.0 Any notices required by this Agreement or by any provision of law shall be made in writing to the parties as follows:


Westport Fire Protection District
5160 South Carpenter Road
Modesto, CA 95358

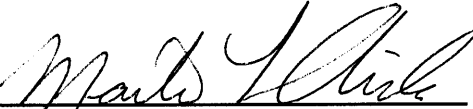
County of Stanislaus
County Fire Warden's Office
3705 Oakdale Road
Modesto, CA 95357

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date written above in Section 2.0.

COUNTY OF STANISLAUS

WESTPORT FIRE PROTECTION DISTRICT

By: 
Chief Executive Officer or his
Designee

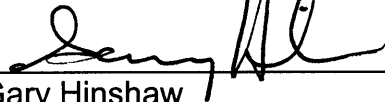
By: 
Martin Avila
Board Chairman


"USER"

"County"

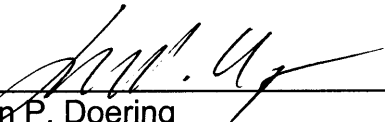
APPROVED AS TO FORM:
Stanislaus County Fire Warden's Office

APPROVED AS TO FORM:

By: 
Gary Hinshaw
County Fire Warden

By: 
Gary Thompson
Fire Chief

APPROVED AS TO FORM:
Stanislaus County Council

By: 
John P. Doering
County Council