A-10-132

COPY

MEMORANDUM OF UNDERSTANDING COVERING THE ESTABLISHMENT, OPERATION, AND MANAGEMENT OF A REGIONAL HAZ-MAT TEAM

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into effective this 19 day of October, 2010, between and among the County of Eddy ("COUNTY"), the City of Carlsbad ("CARLSBAD"), and the Waste Isolation Pilot Plant Project ("WIPP") on behalf of its Emergency Response Team(s). The entities aforementioned that are political bodies are executing this MOU with the consent and at the request of the following agencies within each body: the Eddy County Office of Emergency Management ("OEM"), the Eddy County Fire Service ("ECFS"), and the Carlsbad Fire Department ("CFD").

WHEREAS, the Hazardous Materials Emergency Response Act , NMSA 1978, Section 12-12-17 through 12-12-30 as amended, directs state government to manage hazardous material incidents or accidents that threaten lives, property and the environment; and

WHEREAS, in conformity with said Act, the New Mexico Department of Homeland Security and Emergency Management and the New Mexico State Police have developed the New Mexico Hazardous Materials Emergency Response Plan (HMER Plan), a copy of which is incorporated herein as though fully set forth as Exhibit "A"; and

WHEREAS, the HMER Plan provides in Article III Section 2 that local government is responsible for protecting the health and safety of its citizens and the environment and in order to accomplish same, local governments must develop and maintain a hazardous materials emergency response plan; and

WHEREAS, the HMER Plan directs local government response agencies be trained in hazardous materials emergency response, which is a prerequisite to the local responders having authority to manage various haz-mat emergency incidents; and

WHEREAS, each of the parties hereto desires to establish an Eddy County Haz-Mat Response Team with an Eddy County Haz-Mat Response Board, with the Board's responsibilities being to 1) develop, implement and maintain its own HMER plan, which is compliant with State regulations, which will govern and control activities and responses of the qualified emergency response agencies who are parties to this MOU; 2) insure that all agencies who are parties hereto comply with a) policies developed by the Board and b) those terms and provisions that have been agreed upon and made a part of this MOU.

WHEREAS, the parties are desirous of setting forth their agreement in writing;

NOW, THEREFORE, THE PARTIES AGREEMENT WITNESSETH:

1. BOARD CREATION. In order to develop, implement and maintain an HMER plan, which is compliant with State regulations, covering and governing qualified

emergency response agencies who are parties hereto and to insure compliance with policies developed though the collaborative efforts of the parties hereto, the parties hereby create a Regional Haz-Mat Response Board. The Board shall be made up of management representation from the following agencies of the parties hereto: one member each from the Eddy County OEM, the Eddy County Fire Service, the City of Carlsbad Fire Department, the WIPP and one at large member appointed by the board. The board may appoint non-voting members to assist the board with some activities.

2. BOARD RESPONSIBILITIES. The Board as established shall be responsible for coordinating the development, implementation and maintenance of an HMER plan, which is compliant with State regulations, for the parties hereto. In addition, policy decisions and purchases may be made by the Board on behalf of the Regional Haz-Mat Team, provided, all purchases shall comply with the State of New Mexico Purchasing Act. In addition to the foregoing, the Board's responsibilities include the following:

A. Meet on a quarterly basis, at times and locations established by the initial board, to oversee the general operation of the countywide Haz-Mat team.

B. Appoint a "team leader" to :
   1) Develop team Standard Operating Guidelines (SOG's);
   2) Develop team training requirements/standards;
   3) Develop equipment requirements/standards; and
   4) Ensure equipment maintenance and readiness.

C. Establish/Approve Team response SOG's.

D. Establish/Approve Training requirements/standards.

E. Establish/Approve health requirements/standards.

F. Establish/Approve equipment requirements/standards.

G. Establish team notification/call-out/ response procedures.

3. EQUIPMENT. Each of the Agencies who are parties hereto have equipment for use in haz-mat response situations. Additionally, the Eddy County OEM has in its inventory, and will be able to acquire for Eddy County in the future, equipment purchased with Department of Homeland Security and other available funding. The ownership of all equipment of each agency which is a party hereto, shall be retained by such agency. It is the agreement of the parties hereto that in responding to emergency haz-mat situations/incidents, the equipment of all parties is subject to use by all parties in responding to same. Independent of WIPP JPA funds, Eddy County shall create a budget and provide initial funding from Fire Excise Tax funds for equipment to be used by the regional haz-mat team, not to exceed $20,000.00. Additional, future commitment(s) of funds for equipment shall be determined and established on an annual basis in the budgeting process of Eddy County

All maintenance costs will be the responsibility of the agency "owning" or in possession of the equipment. Provided, further, should equipment of another agency be used in a response, the agency utilizing that equipment will be responsible for the return of same in the condition it was in prior to its utilization. The using agency,

additionally 1) shall be responsible and hold all other parties hereto harmless for any resultant claim or liability while that equipment is being utilized by a using agency, and 2) shall maintain mileage logs during the time of its use.

Any non haz-mat use by a party hereto of any equipment shall be at the sole risk and responsibility of the party using same, and said equipment shall be maintained and returned to the agency owning same in as good a condition as same was immediately prior to its use, normal wear and tear excepted.

4. TRAINING. As mentioned herein-above, the Board shall establish training requirements for the haz-mat team members, which standards shall be in writing and reviewed annually. All training costs of responders, including overtime and backfill with the agency who employs the haz-mat team member, shall be the sole responsibility of the member's employer. The haz-mat team and Board shall establish and reduce to writing, training schedules, drills and exercises for the team, and requirements to be met by the members in order to maintain membership as part of the haz-mat team. Independent of WIPP JPA funds, Eddy County shall create a budget and provide initial funding from Fire Excise Tax funds for training of haz-mat personnel, not to exceed $10,000.00. Additional, future commitment of funds for training shall be determined and established on an annual basis in the budgeting process of Eddy County.

5. HAZ-MAT VEHICLES, INCLUSIVE OF TRAILERS. The parties hereto have agreed and understand, that the agency/party utilizing the haz-mat vehicles, inclusive of trailers, shall be responsible for the safe use and operation of same, and all vehicles and trailers shall be returned in the same condition the vehicle and/or trailers were in immediately prior to that use, including the responsibility to refuel same. In addition, the vehicles and trailers utilized shall be cleaned, serviced and stocked with materials by the using agency to insure same is in condition to respond to future emergency situations. Any parties utilizing haz-mat vehicles shall keep and maintain mileage logs on said vehicle use.

6. LIABILITY AND INSURANCE. By entering into this Agreement, the parties shall not be responsible for liability incurred as a result of the other parties' acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, (as amended). This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify in any way the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

Each agency/party shall insure that they have in full force and effect at any time they utilize any haz-mat equipment, vehicles, and/or equipment, insurance covering same, which insurance shall, also, include liability coverage for the equipment, vehicles and trailers, and for the personnel utilizing or operating same. Each of the parties hereto shall name all other agencies who are party to this MOU as "additional insureds" on its policies. Unless otherwise agreed among such agencies, copies of proof of insurance shall be provided to the Board and to the Eddy County Office of

additionally 1) shall be responsible and hold all other parties hereto harmless for any resultant claim or liability while that equipment is being utilized by a using agency, and 2) shall maintain mileage logs during the time of its use.

Any non haz-mat use by a party hereto of any equipment shall be at the sole risk and responsibility of the party using same, and said equipment shall be maintained and returned to the agency owning same in as good a condition as same was immediately prior to its use, normal wear and tear excepted.

4. TRAINING. As mentioned herein-above, the Board shall establish training requirements for the haz-mat team members, which standards shall be in writing and reviewed annually. All training costs of responders, including overtime and backfill with the agency who employs the haz-mat team member, shall be the sole responsibility of the member's employer. The haz-mat team and Board shall establish and reduce to writing, training schedules, drills and exercises for the team, and requirements to be met by the members in order to maintain membership as part of the haz-mat team. Independent of WIPP JPA funds, Eddy County shall create a budget and provide initial funding from Fire Excise Tax funds for training of haz-mat personnel, not to exceed $10,000.00. Additional, future commitment of funds for training shall be determined and established on an annual basis in the budgeting process of Eddy County.

5. HAZ-MAT VEHICLES, INCLUSIVE OF TRAILERS. The parties hereto have agreed and understand, that the agency/party utilizing the haz-mat vehicles, inclusive of trailers, shall be responsible for the safe use and operation of same, and all vehicles and trailers shall be returned in the same condition the vehicle and/or trailers were in immediately prior to that use, including the responsibility to refuel same. In addition, the vehicles and trailers utilized shall be cleaned, serviced and stocked with materials by the using agency to insure same is in condition to respond to future emergency situations. Any parties utilizing haz-mat vehicles shall keep and maintain mileage logs on said vehicle use.

6. LIABILITY AND INSURANCE. By entering into this Agreement, the parties shall not be responsible for liability incurred as a result of the other parties' acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, (as amended). This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify in any way the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

Each agency/party shall insure that they have in full force and effect at any time they utilize any haz-mat equipment, vehicles, and/or equipment, insurance covering same, which insurance shall, also, include liability coverage for the equipment, vehicles and trailers, and for the personnel utilizing or operating same. Each of the parties hereto shall name all other agencies who are party to this MOU as "additional insureds" on its policies. Unless otherwise agreed among such agencies, copies of proof of insurance shall be provided to the Board and to the Eddy County Office of

Emergency Management and kept current and on file there.

7. HAZ-MAT TEAM AND AGENCY PARTICIPATION. The Board shall establish the regional haz-mat team size and the number of individuals to be provided by the various agencies that are party to this MOU. These numbers, and any other contributions, may be adjusted as necessary and as established by the Board at a meeting where this topic is specifically noticed for discussion.

8. TERMS OF THE AGREEMENT. Term: this Agreement shall be for a term of four (4) years from the date signed by all parties. Renewal: this Agreement will renew automatically during the four (4) year term, unless terminated by either party 60 days prior to the end of the term. Termination with or without Cause: Either party may terminate this Agreement, with or without cause, by giving the other party 60 days written notice.

9. PSA AGREEMENT. Additionally, Eddy County and the City Carlsbad understand and agree that its entering into this agreement shall not release any party from the responsibilities and obligations agreed to be undertaken by them in a Purchase Service Agreement between or among any of these parties.

10. MISCELLANEOUS. The parties hereto understand and agree that the various agencies operating within the terms of this Agreement are critical to the success and operation of an HMER qualified regional haz-mat team, and that both the equipment and properly trained personnel will provide security to the citizens of Eddy County. Each party hereto agrees to participate and assist all other parties hereto as may be necessary to fully implement the terms of this MOU.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS MEMORANDUM OF UNDERSTANDING EFFECTIVE THE 19 DAY OF October, 2010.

EDDY COUNTY, NM BOARD OF COMMISSIONERS

by: _____
Jack Volpato, Chairman

Attest: _____
Darlene Rosprim, Eddy County Clerk

CITY OF CARLSBAD, NM

by: _____
Dale Janway, Mayor

Attest: _____
Amanda Asbury McDougall, City Clerk

WASTE ISOLATION PILOT PLANT

by: _____