

A G R E E M E N T

THIS AGREEMENT is made and entered into this 8th day of February, 2016, by and between the CITY OF GRAND JUNCTION, COLORADO, hereinafter referred to as the CITY and MESA COUNTY, COLORADO, hereinafter referred to as the COUNTY.

WHEREAS, the COUNTY is obligated by law to respond to hazardous substance incidents within its jurisdiction and otherwise perform as the Designated Emergency Response Authority (D.E.R.A.) for Mesa County; and

WHEREAS, the CITY, owns hazardous substance emergency response equipment and employs trained personnel who can perform the D.E.R.A. functions; and

WHEREAS, the CITY and the COUNTY are willing to enter into an agreement for the provision of required D.E.R.A. services by the CITY, for and on behalf of, the residents of the COUNTY, beyond those COUNTY residents living in the CITY;

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

1. The CITY shall provide emergency hazardous substance response services to the CITY and other corporate and unincorporated areas of the COUNTY in conformance with statutory obligations and as more particularly described in Exhibit A, incorporated herein by this reference as if fully set forth.
2. The COUNTY shall pay to the CITY for services provided for calendar year 2016, an amount of \$52,546 for the CITY serving as the D.E.R.A. for the COUNTY.
3. Before any payment by the COUNTY is made to the CITY, the CITY agrees to provide the County's Emergency Manager with an invoice.
4. The CITY agrees that it will furnish and pay for all of the labor, technical, administrative and professional services and all supplies, materials, equipment, office space and facilities, analyses, calculations and any other resources reasonably required to perform and complete the services, activities and functions of the D.E.R.A., as further described in Exhibit A.
5. This agreement is terminable by either the CITY or the COUNTY upon ninety days written notice. If this agreement is terminated, the CITY shall be compensated for and such compensation shall be limited to; (A) the reasonable value to the COUNTY of the services which the CITY performed prior to the date of termination, but which had not yet been paid for, and/or (B) the cost of any work the COUNTY approves in writing which it determines is needed to accomplish an orderly termination of this agreement.


6. The COUNTY hereby agrees to indemnify and hold harmless the CITY, its officers, agents and employees from and against any and all loss of, or damage to, property or injuries to, or death of any person or persons, including property and employees or agents of the CITY and shall indemnify and hold harmless the CITY, its officers, agents and employees from any and all claims, suits, damages, costs, expenses, liabilities, actions or proceedings arising out of the CITY's performance of this agreement, to the extent permitted by law. The COUNTY's obligation to indemnify or hold harmless the CITY, its officers, agents and employees under this agreement shall not apply to liability or damages resulting from the negligence of the CITY's officers, agents and employees nor to injuries covered by workers compensation. The CITY hereby agrees to indemnify and hold harmless the COUNTY, its officers, agents and employees from and against any and all loss of, or damage to, property or injuries to, or death of any person or persons, including property and employees or agents of the COUNTY, and shall indemnify and hold harmless the COUNTY, its officers, agents and employees from any and all claims, suits, damages, costs, expenses, liabilities, actions or proceedings arising out of the CITY's negligent performance under this agreement. This paragraph shall survive the termination of this agreement.
7. The CITY shall maintain adequate worker's compensation insurance through an authorized self-insurance plan approved by the State of Colorado, insuring the payment of workers benefits to its employees.
8. Notices concerning this agreement, notices of alleged or actual violations of the terms or provisions of this agreement and other notices of similar importance shall be made in writing by the CITY to the COUNTY at 215 Rice Street, Grand Junction, Colorado, 81501, and by the COUNTY to the CITY at 250 North 5th Street, Grand Junction, Colorado, 81502, by prepaid United States mail. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service.
9. The COUNTY shall have the right to audit, examine and copy the CITY's records related to work performed under this agreement. The CITY shall retain these records for three years after the termination of this agreement.
10. For all purposes under this agreement, the CITY shall be an independent contractor retained on a contractual basis to perform technical and professional work and it is not intended nor shall it be construed, that the CITY employees are employees, officers or agents of the COUNTY for any purpose whatsoever.
11. The CITY agrees to perform its work under this agreement in accordance with the reasonable operational requirements of the COUNTY.

12. The CITY shall promptly bill any and all persons or entities releasing or spilling hazardous substances or otherwise requiring hazardous substance emergency response under this agreement. All monies recovered shall be dedicated to the hazardous substance emergency response program and D.E.R.A. activities and services. For releases or spills of hazardous substances or other hazardous substances or emergency responses in the unincorporated areas of the County where a responsible party is unknown or cannot be identified, the CITY shall provide the County a copy of the charges for the incident and the County will seek cost recovery. The CITY shall furnish the County Emergency Manager duplicate receipts or other satisfactory evidence showing payments received and all billings, debts and obligations incurred by the CITY performing work under this agreement on unincorporated county land.
13. The CITY shall exercise that degree of care and skill possessed by trained hazardous substance emergency response personnel to assure that all of the work performed under this agreement by the CITY shall comply with applicable laws, rules, regulations and safety requirements. The CITY further represents that the work performed will not intentionally violate any applicable laws, rules, regulations or codes including but not limited to the requirements of the most recently adopted United States Code, Code of Federal Regulations and the Colorado Revised Statutes.
14. All emergency response plans and other documents submitted to the CITY by the COUNTY or to the COUNTY by the CITY are the property of the CITY and the COUNTY and each may, without restriction, make use of such as it sees fit. There shall be no liability for any damage which may result from any use of any documents for purposes other than those intended or described in the document or plan.
15. All emergency contingency plans, chemical inventories or other information required by S.A.R.A. Title III submitted to the CITY by the COUNTY or to the COUNTY by the CITY are the property of the CITY and the COUNTY and such shall be made available to the public in conformance with the requirements of section 324 of Title III.
16. In the event any of the provisions, or applications thereof, of this agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected
17. The CITY shall have the right to include representations that it is serving as the D.E.R.A. for Mesa County among the CITY's promotional materials. The CITY's materials shall not include the COUNTY's confidential or proprietary information if the COUNTY has previously advised the CITY in writing of the specific information considered by the COUNTY to be confidential or proprietary.


18. The enforcement of the terms and conditions of this agreement and all rights of action relating to such enforcement, shall be strictly reserved to the CITY and the COUNTY and nothing contained in this agreement shall give or allow any claim or right of action by any other or third person on such agreement.
19. This agreement is made in Grand Junction, Colorado and shall be construed and interpreted under the laws of the State of Colorado. In the event any aspect of the Agreement is litigated by or among the parties, the prevailing party shall be entitled to its costs and reasonable attorney's fees.
20. This agreement shall become effective on the day and year first written above and shall continue in effect until December 31, 2016. Payment and indemnification obligations, as provided herein, shall continue in effect and survive termination until discharged.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first written above.


CITY OF GRAND JUNCTION:

by: 
Tim Moore
Interim City Manager

RECOMMENDED AND APPROVED:


by: 
Ken Watkins
Fire Chief

ATTEST:

by: 
Stephanie Tuin
City Clerk



MESA COUNTY COMMISSIONERS:

by: 
Rose Pugliese, Chair
Board of County Commissioners

ATTEST:


by: 
Sheila Reiner
Mesa County Clerk and Recorder



EXHIBIT A

DERA SCOPE OF WORK

The CITY agrees that it will provide 24 hour response to all hazardous substance incidents occurring within Mesa County.

The CITY will provide all of the manual, technical, administrative and professional labor and all equipment, supplies, materials, office space and facilities required to perform as the Designated Emergency Response Authority (D.E.R.A.) as agreed in the foregoing agreement. D.E.R.A. responsibilities include but are not necessarily limited to, providing hazardous substance response, analysis and or containment or arranging for containment, notification of law enforcement or other appropriate authorities, providing for the initial notification of citizens that are or may be affected, and determining, documenting and reporting potentially responsible parties.

The CITY, by and through the Grand Junction Fire Department shall supervise cleanup and mitigation activities.

The CITY will provide hazardous substance incident awareness level training to COUNTY employees at intervals agreed to by the parties, or as warranted by current legislation.

The Mesa County Emergency Manager shall be notified of hazardous substance incidents in accordance with the appropriate annex of the Mesa County Emergency Operations Plan.

The CITY, by and through the Grand Junction Fire Department, shall retain command, elect to establish a unified command, or delegate command at all hazardous substance incidents. Other fire agencies and their members may be used by GJFD at hazardous materials incidents.

The CITY shall maintain trained personnel and the specialized equipment, as determined by the City to be reasonably required to discharge the D.E.R.A. responsibilities.

The CITY, by and through the Grand Junction Fire Department shall perform up to 36 site visits of fixed facilities reporting storage of hazardous substances under SARA Title III. The purpose of site visits shall be to conduct safety inspections and to pre-plan emergency response to hazardous substance incidents at visited facilities. Site visits are to focus on facilities in, near, or having the potential to impact populated areas.

The foregoing Exhibit is attached and incorporated by reference to the agreement. By initialing below, the parties affirmatively state that they have read the Exhibit and acknowledge the responsibilities and obligations associated therewith.



City



County