

ORDINANCE NO. 02-97 AC CMS

**AN ORDINANCE APPROVING AN AGREEMENT FOR HAZARDOUS
MATERIALS RESPONSE AND MITIGATION IN LORAIN COUNTY**

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

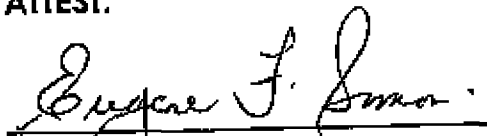
SECTION 1. That the proposed agreement for Hazardous Materials Response and Mitigation in Lorain County, a copy being attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute same on behalf of the City.

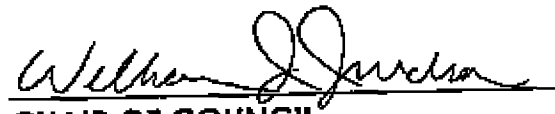
SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading – October 7, 2002
2nd Reading – October 21, 2002 (E)
3rd Reading –

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: 10/23/2002

EFFECTIVE DATE: 10/23/2002

**CONTRACTUAL AGREEMENT FOR HAZARDOUS MATERIALS
EMERGENCY RESPONSE AND MITIGATION IN LORAIN COUNTY**

This agreement is entered into by and among the following political subdivisions for the purpose of hazardous material planning and emergency response capabilities in your community for the period of 2003 through 2007, at which time the existing agreement will be either rewritten, extended, or cancelled.

1. Amherst
2. Amherst Township
3. Avon
4. Avon Lake
5. Brighton Township
6. Brownhelm Township
7. Camden Township
8. Carlisle Township
9. Columbia Township
10. Eaton Township
11. Elyria
12. Elyria Township
13. Grafton
14. Grafton Township
15. Henrietta Township
16. Huntington Township
17. Kipton
18. LaGrange
19. LaGrange Township
20. Lorain
21. New Russia Township
22. North Ridgeville
23. Oberlin
24. Penfield Township
25. Pittsfield Township
26. Rochester
27. Rochester Township
28. Sheffield
29. Sheffield Lake
30. Sheffield Township
31. South Amherst
32. Vermilion
33. Wellington
34. Wellington Township

WITNESSETH:

WHEREAS, each of the aforementioned parties have either their own or contractual fire fighting capabilities and are political subdivisions within Lorain County; and

WHEREAS, each of the political subdivisions have submitted a signed Cost Recovery Ordinance/Resolution in accordance to section 3745.13 of the Ohio Revised Code and 40 C.F.R. 300 of the Federal Registrar; and

WHEREAS, each of the political jurisdictions have existing mutual aid agreements between fire departments for the purpose of providing assistance during times of emergency including threats to life and/or property, and

WHEREAS, each of the political subdivisions shall ensure that their personnel meet and maintain required hazardous materials training in accordance with the Lorain County Hazardous Materials Advisory Board, the Lorain County Hazardous Materials Emergency Response Plan, the Lorain County Emergency Management Agency (LCEMA), the Lorain County Local Emergency Planning Committee (LCLEPC), the State Emergency Response Commission, or any other governmental agency or regulation; and

WHEREAS, the political subdivisions deem it to be in their best interest to contract with Lorain County for Hazardous Material Response support; and

WHEREAS, the incident commander representing each political subdivision will maintain direction and control of the incident site and will coordinate with any and all assisting agencies; and

NOW, THEREFORE, in consideration of the promises and agreements herein contained, and not rescinding any fire and emergency protection mutual and agreements which may exist between any of the parties hereto, except those agreements for cost recovery not prescribed under 40 C.F.R. 300, IT IS NOW AGREED, between the parties as follows:

MONETARY FEES:

1. For the purposes of affording and maintaining the additional protection to mitigate and respond to hazardous materials spills within a jurisdiction in 2003 through 2007, each jurisdiction shall pay a set fee of \$0.25 per person (jurisdiction 2000 census population X \$0.25 per person) to the Lorain County Hazardous Materials Advisory Board, through the Lorain County Local Emergency Planning Committee, for the sole purpose of funding the necessary activities and expenses of the Lorain County Hazardous Materials Emergency Response Team. The maximum amount

to be paid by any jurisdiction shall be no more than four thousand dollars (\$4000) per any contract year.

2. The political subdivision of OBERLIN agrees to pay Lorain County Hazardous Materials Advisory Board through the Lorain County Local Emergency Planning Committee the annual sum of \$2048.75 for the operation of the Lorain County Hazardous Materials Emergency Response Team. The annual contractual sum shall be received at the Lorain County Emergency Management Agency on or before 4:30PM, April 10th of each contract year as per the aforementioned cost analysis. Failure to pay the contractual fee on or before 4:30PM, April 10th of each year shall result in a late charge of fifteen (15%) percent of the jurisdiction's annual contractual amount or \$250, whichever is greater.
3. Because of the initial and on-going investments for HazMat related training and equipment incurred by the Lorain, Elyria, and Avon Lake Fire Departments, and the mutual aid provisions among these existing HazMat Teams and the Lorain County Hazardous Materials Emergency Response Team; a nominal contractual fee of \$1.00 per contract year shall be assessed for the jurisdictions of Lorain, Elyria, And Avon Lake for this contractual agreement period. Should the Lorain, Elyria, or Avon Lake HazMat Response personnel and/or capabilities be reduced to a level lower than those recognized and published in the Lorain County Hazardous Materials Response Plan, an assessment shall be made to adjust the \$1 contractual fee to represent an amount based on the standard contractual fee formula prorated on the remaining contract period. The four hazardous materials emergency response teams are encouraged to conduct joint drills whenever possible to ensure capability should the need arise.

MUTUAL AID/LIABILITY/FAILURE OR INABILITY TO RESPOND:

4. The Lorain County Hazardous Materials Emergency Response Teams (i.e. Avon Lake, Elyria, Lorain, Lorain County) shall provide mutual aid capabilities to each other, upon request, should the need arise. At no time shall the Chief or Officer-In-Charge be required to respond to a mutual aid request if it is determined that said assistance will cause the jurisdiction to be unable to provide for its own protection.
5. In no case shall the party hereto called upon or rendering such services be liable for damages to any other party hereto or any of its residents, or contractual obligators, for failure to answer any call, or for lack of speed in answering any such call, or for any inadequacy of equipment, negligent operation of equipment, failure to mitigate said situation or for any cause whatsoever growing out of such use of said equipment and/or personnel.

6. The LCEMA has entered into written mutual aid agreements with the Emergency Management Agencies in Erie, Huron, and Ashland Counties. The political subdivisions, and the parties listed hereto, agree that the LCEMA Director is hereby authorized to activate the Lorain County Hazardous Materials Emergency Response Team to respond to an incident covered by any of the mutual aid agreements with said counties or any other counties with whom the LCEMA hereafter enters into a mutual aid agreement. The provisions of this agreement shall apply to said incidents in counties outside Lorain County to the same extent as if the incident had occurred within one of the participating political subdivisions.

COST RECOVERY/UNKNOWN SPILLER:

7. The LCEMA and LCLEPC will assist the political jurisdiction(s) where the hazardous materials incident took place in cost recovery from the spiller or transporter as prescribed in section 3745.13 of the Ohio Revised Code (ORC).

The Lorain County Hazardous Materials Advisory Board shall maintain an Unknown Spiller Fund to help reduce a jurisdiction's financial burden for expended hazardous materials emergency response/abatement equipment in case of a HazMat incident where the spiller is unknown. Only those jurisdictions that contribute to the fund are eligible for fund usage. The maximum amount that a jurisdiction may request from this fund would be \$2,000 per calendar year. Payments of more than \$2,000 per year may be made at the discretion of the Lorain County Hazardous Materials Advisory Board. A written request for funds shall be submitted to the Lorain County Hazardous Materials Advisory Board, with an explanation of the incident and a detailed cost list. If the cities of Avon Lake, Elyria, or Lorain wish to participate in the Unknown Spiller Fund, their annual fee shall be as follows:

Avon Lake:	\$400.00
Elyria	\$400.00
Lorain	\$400.00

The LCEMA and LCLEPC will pursue any other funding means available to assist the political jurisdiction in recovering costs incurred during an unknown spiller incident.

AUTHORITY OF EXPENDITURES AND FUND USAGE:

8. All contract monies collected shall be used exclusively by, and all expenditures and allocations of the contract funds shall be at the direction and discretion of the Lorain County Hazardous Materials Advisory Board for the purpose of enhancing hazardous material emergency response

capabilities at the county level and maintenance of the Unknown Spiller Fund. Contractual monies shall be disbursed as follows: 10% of the total yearly contractual fee for direct deposit into the Unknown Spiller Fund and 90% of the contractual fee for the operation of the Lorain County Hazardous Materials Emergency Response Team.

9. Monies in the Unknown Spiller Fund in the excess of \$25,000 may be appropriated to other HazMat purposes at the discretion of the Lorain County Hazardous Materials Advisory Board.

TEAM MEMBER/TECHNICIAN REQUIREMENT FORMULA:

10. Each contract participant, exclusive of those jurisdictions who maintain a qualified Hazardous Material Response Team, shall provide HazMat Technician Level capabilities for the Lorain County Hazardous Materials Emergency Response Team based on the following schedule:

<u>Contract Assessment Amount</u> <u>(exclusive of any penalties)</u>	<u>Minimum Technician Level</u> <u>Responders required**</u>
\$1,999.00 or less	1
Each additional \$1,000.00 increment	1*

* increments to determine technician totals shall be rounded up or down to the nearest \$500.00 value.

**Maximum number of required Technicians for any jurisdiction shall be not more than four (4).

Fire Departments serving multiple political subdivisions will only be required to supply team members based upon their home jurisdiction contractual amount, not the total contractual amount for all jurisdictions served.

11. The Lorain County Hazardous Materials Advisory Board has the authority and responsibility to ensure that all jurisdictions served by the Lorain County Hazardous Materials Emergency Response Team maintain their required amount of trained technicians. Should a contract participant fall below the required trained Technician Level Responders at any time during the contractual period, the Board shall notify the noncompliant jurisdiction in writing, via certified mail. The non-compliant jurisdiction shall present a written plan within thirty (30) calendar days of receipt of the notification explaining how the deficiency will be filled, for acceptance by the Lorain County Hazardous Material Advisory Board.

Failure to submit a written plan within the 30-day time frame to replace the deficient number of HazMat technicians shall result in following:

- The Lorain County Hazardous Materials Advisory Board shall forward a letter to the noncompliant Fire Chief and jurisdiction officials by certified mail, along with a copy to the Lorain County Prosecutor, notifying them of the contractual violation(s).
- A penalty of 15% of the contractual amount or \$250 (whichever is greater) shall be issued for failure to comply with the required number of hazardous material technicians.

Failure to pay the penalty within 30 days of issuance will result in commencement of cancellation pursuant to section 16. A noncompliant jurisdiction which receives notice of a penalty or cancellation remains obligated to fulfill its obligations in accordance with the Lorain County Hazardous Materials Response Plan and all other terms of this contract, until the effective date of the cancellation.

The jurisdiction that falls below the required number of technicians may request the vacancy to be temporarily filled through the use of "mutual aid" from an adjacent jurisdiction alternate member for a period not to exceed six (6) months. This will allow the jurisdiction time to train their own personnel to fill their delinquent position. Requests to use "mutual aid" must be submitted in writing to the Lorain County Hazardous Materials Advisory Board and also signed by the jurisdiction providing the alternate "mutual aid" member. The "mutual aid" member shall only be considered a temporary resolution and does not negate the responsibility of the delinquent jurisdiction to provide a permanent member to the HazMat team. If a time extension is needed, it will be up to the sole discretion of the Lorain County Hazardous Materials Advisory Board. If granted, the maximum additional time allowance shall be no more than six (6) months.

TEAM MEMBER TRAINING REQUIREMENTS:

12. On a yearly basis, ten (10) training sessions are normally scheduled for the second Thursday of each month from 7PM – 9PM. The sessions will contain the minimum training requirements described in CFR 1910.20 for a hazardous materials emergency responder. Members of the Lorain County Hazardous Materials Emergency Response Team shall be required to attend a minimum of five (5), two (2) hour training sessions per year to be considered as being an active team member. On a quarterly basis (date, location, and time to be determined by the board), the Lorain County Hazardous Materials Advisory Board will provide an additional training session of six (6) hours in length to allow those members that were not

able to attend one or more of the required sessions to maintain their minimum training requirements. Members can attend all or part of these extra sessions as needed. Salaries or any other reimbursement received to attend any training session shall be the responsibility of the jurisdiction.

The Lorain County Hazardous Materials Advisory Board shall provide attendance figures for the team to each fire chief on a monthly basis, along with a copy of the minutes of the Advisory Board meeting. It is the responsibility of the jurisdiction and the fire chief to ensure that their member(s) is/are attending the required training sessions. If the member falls below the required amount of training sessions on a quarterly basis and does not attend a make-up session, the jurisdiction shall then be considered out-of compliance and shall be subject to a citation of 15% of their contractual amount or \$250.00, whichever is greater.

TEAM MEMBER PHYSICALS:

13. All team members (primary and alternate) shall be required to take and pass a physical on a bi-annual basis during the months of September and October at a location identified by the Lorain County Hazardous Materials Advisory Board. The Lorain County Hazardous Materials Advisory Board will pay for costs of the physical. The Lorain County Hazardous Materials Advisory Board shall pay for all primary jurisdiction team members, and one (1) alternate member if identified by a jurisdiction. Any additional alternate member(s) identified by a jurisdiction shall have their physical paid for by the jurisdiction. Scheduling will be the responsibility of the individual team member. If the team member fails to schedule a physical during the identified time frame, costs for the physical shall be paid for by the jurisdiction.
14. The jurisdiction fire chief shall receive a letter from the physical provider, by way of the board, stating that the member either passed or failed the exam. By December 31st of the year that the physical is completed, the fire chief shall submit, in writing, a form provided by the Lorain County Hazardous Materials Advisory Board stating/identifying the following:
 - Primary team member(s) for the jurisdiction
 - Alternate team member(s) for the jurisdiction
 - Statement showing that each primary and alternate member has passed their physical

If the jurisdiction fails to provide this information by December 31 of the physical year, the jurisdiction shall be subject to a citation of 15% of their contractual amount or \$250.00, whichever is greater.

PAGERS:

15. The Lorain County Hazardous Materials Advisory Board shall provide and pay for one (1) pager (type, coverage, and provider to be determined by the Board) to each primary team member. The Board will also provide one (1) pager of the same type to one (1) alternate member as identified by each jurisdiction. Any additional pagers needed for any additional jurisdiction alternate member shall be arranged for, billed to, and paid by the local jurisdiction. Pager batteries are the responsibility of the team member.

CANCELLATION OR REOPENING OF AGREEMENT:

16. It is mutually understood and agreed to that any party hereto may request to reopen, for the purpose of renegotiation, or cancel its participation in this contractual agreement, by giving a sixty (60) day written notice to all said parties hereto by registered mail, return receipt requested to the Lorain County Prosecutor's Office and Lorain County Emergency Management Agency. This contract shall be effective upon approval of the governing bodies of Lorain County and the political jurisdictions entering into this contractual agreement that is to commence at 12:00AM, January 1, 2003 and ending 12:00PM, December 31, 2007.
17. At all times, copies of this contract shall remain in the offices of the Lorain County Prosecutor, Lorain County Emergency Management Agency and the local political jurisdiction.

IN WITNESS WHEREOF, said political subdivisions have caused this agreement to be executed as provided by ordinance or resolution duly adopted for that purpose, a copy of which is hereto appended.

OBERLIN
Name of Political Subdivision

10/24/02
Date

By: [Signature]

Title: CITY MANAGER

By: [Signature]

Title: FIRE CHIEF

By: _____

Title: _____

BOARD OF LORAIN COUNTY COMMISSIONERS

By: [Signature]

President of the Board

By: [Signature]

Vice President of the Board

By: [Signature]

Board Member

LORAIN COUNTY EMERGENCY MANAGEMENT AGENCY

By: [Signature]

Title: DIRECTOR

LORAIN COUNTY LOCAL EMERGENCY PLANNING COMMITTEE

By: [Signature]

Title: Chair LCEPC

NORTH CENTRAL FIRE CHIEF'S ASSOCIATION

By: [Signature]

Title: Pres. NCFCA

LORAIN COUNTY HAZARDOUS MATERIALS ADVISORY BOARD

By: [Signature]

Title: CHAIRMAN

Approved as to legal content and form:

[Signature]

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WHEREAS, the political subdivisions deem it to be in their best interest to contract with Lorain County for Hazardous Material Response support; and

WHEREAS, the incident commander representing each political subdivision will maintain direction and control of the incident site and will coordinate with any and all assisting agencies; and

NOW, THEREFORE, in consideration of the promises and agreements herein contained, and not rescinding any fire and emergency protection mutual aid agreements which may exist between any of the parties hereto, except those agreements for cost recovery not prescribed under 40 C.F.R. 300, IT IS NOW AGREED, between the parties as follows:

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5. In no case shall the party hereto called upon or rendering such services be liable for damages to any other party hereto or any of its residents, or contractual obligators, for failure to answer any call, or for lack of speed in answering any such call, or for any inadequacy of equipment, negligent operation of equipment, failure to mitigate said situation or for any cause whatsoever growing out of such use of said equipment and/or personnel.

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Failure to submit a written plan within the 30-day time frame to replace the deficient number of HazMat technicians shall result in following:

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Failure to pay the penalty within 30 days of issuance will result in commencement of cancellation pursuant to section 16. A noncompliant jurisdiction which receives notice of a penalty or cancellation remains obligated to fulfill its obligations in accordance with the Lorain County Hazardous Materials Response Plan and all other terms of this contract, until the effective date of the cancellation.

The jurisdiction that falls below the required number of technicians may request the vacancy to be temporarily filled through the use of "mutual aid" from an adjacent jurisdiction alternate member for a period not to exceed six (6) months. This will allow the jurisdiction time to train their own personnel to fill their delinquent position. Requests to use "mutual aid" must be submitted in writing to the Lorain County Hazardous Materials Advisory Board and also signed by the jurisdiction providing the alternate "mutual aid" member. The "mutual aid" member shall only be considered a temporary resolution and does not negate the responsibility of the delinquent jurisdiction to provide a permanent member to the HazMat team. If a time extension is needed, it will be up to the sole discretion of the Lorain County Hazardous Materials Advisory Board. If granted, the maximum additional time allowance shall be no more than six (6) months.

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16. It is mutually understood and agreed to that any party hereto may request to reopen, for the purpose of renegotiation, or cancel its participation in this contractual agreement, by giving a sixty (60) day written notice to all said parties hereto by registered mail, return receipt requested to the Lorain County Prosecutor's Office and Lorain County Emergency Management Agency. This contract shall be effective upon approval of the governing bodies of Lorain County and the political jurisdictions entering into this contractual agreement that is to commence at 12:00AM, January 1, 2003 and ending 12:00PM, December 31, 2007.
17. At all times, copies of this contract shall remain in the offices of the Lorain County Prosecutor, Lorain County Emergency Management Agency and the local political jurisdiction.

IN WITNESS WHEREOF, said political subdivisions have caused this agreement to be executed as provided by ordinance or resolution duly adopted for that purpose, a copy of which is hereto appended.

OBERLIN
Name of Political Subdivision

10/29/02
Date

By: [Signature]

Title: CITY MANAGER

By: [Signature]

Title: FIRE CHIEF

By: _____

Title: _____

BOARD OF LORAIN COUNTY COMMISSIONERS

By: [Signature], President of the Board

By: [Signature], Vice President of the Board

By: [Signature], Board Member

LORAIN COUNTY EMERGENCY MANAGEMENT AGENCY

By: [Signature] Title: DIRECTOR

LORAIN COUNTY LOCAL EMERGENCY PLANNING COMMITTEE

By: [Signature] Title: Chair LCEPC

NORTH CENTRAL FIRE CHIEF'S ASSOCIATION

By: [Signature] Title: Pres. NC FCA

LORAIN COUNTY HAZARDOUS MATERIALS ADVISORY BOARD

By: [Signature] Title: CHAIRMAN

Approved as to legal content and form:

[Signature]