

MINE RESCUE ASSISTANCE AGREEMENT

This **MINE RESCUE ASSISTANCE AGREEMENT** (the "Agreement") is made and entered into this 14th day of September, 2010 (the "Effective Date") by and between the following mining companies, which are referred to collectively herein as the "Parties" and individually as a "Party".

- **BHP Billiton New Mexico Coal**
- **Chevron Mining Inc. – Questa Mine**
- **Intrepid Potash – New Mexico, LLC**
- **Mosaic Potash Carlsbad Inc**
- **Freeport-McMoRan Copper & Gold, New Mexico Operations**
- **U.S. Department of Energy Carlsbad, NM**
- **Lordsburg Mining Company**
- **Chevron Mining. – McKinley Mine**

WHEREAS, the nature of the mining industry and its associated hazards is such that there is always a risk of an emergency requiring additional resources or manpower beyond the capacity of an individual mine;

WHEREAS, the Parties acknowledge that cooperatively and gratuitously making each of their respective rescue teams available to each other on a good Samaritan basis may save lives, increase the speed at which emergency care is available, and may help to minimize the extent of injuries of personnel in need of emergency care or assistance;

WHEREAS, each Party maintains mine rescue teams and equipment;

WHEREAS, the Parties desire to coordinate their resources for responses to emergencies;

NOW, THEREFORE, in consideration of the foregoing recitals, which are an integral part of this Agreement, and in reliance on the mutual promises and obligations contained herein, the Parties hereby agree as follows:

1. DEFINITIONS

- 1.1 **"Assistance"** means the provision of Emergency Response Resources by a Provider to assist a Receiver in responding to an Emergency.
- 1.2 **"Contact"** means a person listed on a Party's Contact List.
- 1.3 **"Contact List"** means a list prepared by a Party containing Contact Information for no fewer than four (4) senior management personnel from the Party's organization, that are responsible for mine rescue.
- 1.4 **"Contact Information"** means first and last name, job title, office telephone number, and mobile phone number.

- 1.5 “**Emergency**” means a natural or anthropogenic event, or a combination thereof, that the Receiver reasonably believes may exceed, or has exceeded, the capacity of the Receiver’s Emergency Response Resources.
- 1.6 “**Emergency Response Resources**” means services, personnel, equipment and supplies used or useful in responding to an emergency.
- 1.7 “**Incident Site**” means the location of the Emergency, e.g., Receiver’s property or an access route to or from Receiver’s property.
- 1.8 “**Mobilized**” means that a Provider’s Mine Rescue Team Member is away from Provider’s mine and is unable to return to his or her regular home because he or she is providing Assistance. A Provider’s Mine Rescue Team Member remains Mobilized until he or she returns to the Provider’s mine or returns to his or her regular home. A Mine Rescue Team Member is mobilized while traveling to and from any location in connection with providing Assistance.
- 1.9 “**Period of Assistance**” means a specified period of time when a Provider provides Assistance to a Receiver. The Period of Assistance commences when Provider’s Contact informs Receiver’s Contact that Provider will provide Assistance. The Period of Assistance ends when Provider’s Director of Operations notifies Receiver’s Director of Operations that all of Provider’s Emergency Response Resources are no longer mobilized.
- 1.10 “**Provider**” means a Party providing Assistance, or being asked to provide Assistance, under the terms of this Agreement.
- 1.11 “**Provider’s Director of Operations**” means the individual in Provider’s organization who, until replaced by Provider, is responsible for the coordination and control of Provider’s Emergency Response Resources.
- 1.12 “**Provider’s Employees**” means the officers, directors, employees, agents, contractors or representatives of Provider, and the officers directors, employees, agents, contractors or representatives of any parent, affiliate or subsidiary business of Provider. Provider’s Employees include, but are not limited to, Provider’s Director of Operations and Provider’s Mine Rescue Team Members.
- 1.13 “**Provider’s Journeyman Rate**” means the highest regularly paid hourly wage rate paid by Provider to Provider’s Employees at Provider’s mine.
- 1.14 “**Provider’s Mine Rescue Team**” means a team of individuals, all of whom are Provider’s Employees, and each of whom possesses a valid mine rescue seal or standard training certificate or its equivalent in good standing.
- 1.15 “**Provider’s Mine Rescue Team Member**” means a Provider’s Employee who is a member of Provider’s Mine Rescue Team.

- 1.16 **“Receiver”** means a Party receiving Assistance, or asking for Assistance, under the terms of this Agreement.
- 1.17 **“Receiver’s Director of Operations”** means the individual in Receiver’s organization who, until replaced by Receiver, is responsible for the coordination and control of Receiver’s Emergency Response Resources.
- 1.18 **“Receiver’s Employees”** means the officers, directors, employees, agents, contractors or representatives of Receiver, and the officers, directors, employees, agents, contractors or representatives of any parent, affiliate or subsidiary business of Receiver.
- 1.19 **“Request for Assistance”** means a request for Assistance that is communicated orally or in writing by a Receiver to a Provider.
- 1.20 **“Surface Provider”** means a surface mining entity providing Assistance, or being asked to provide Assistance on the surface, under the terms of this Agreement.
- 1.21 **“Underground Provider”** means an underground mining entity providing Assistance, or being asked to provide Assistance under the terms of this Agreement, on the surface or underground, and whose mine rescue team members meet the requirements of 30 C.F.R., Part 49.

2 GENERAL

- 2.1 This Agreement does not create in any Party a duty to maintain Emergency Response Resources for the benefit of any other Party.
- 2.2 This Agreement does not create in any Party a duty to respond to a Request for Assistance or an Emergency.
- 2.3 Within ten (10) calendar days of the Effective Date, each Party shall provide each other Party with a Contact List.
- 2.4 Each Party shall include up-to-date Contact Information on its Contact List and shall provide each other Party with a new or revised Contact List whenever Contact Information changes.

3 PROCEDURE FOR INITIATING A REQUEST FOR ASSISTANCE

- 3.1 When an Emergency occurs, Receiver’s Contact shall initiate a Request for Assistance by communicating directly with Provider’s Contact. Receiver’s Contact shall describe the nature of the Emergency and the type of Assistance being requested, and shall provide Contact Information for Receiver’s Director of Operations.

- 3.2 When Provider's Contact receives a Request for Assistance, he or she will determine, at his or her sole and absolute discretion, whether to provide the Assistance requested.
- 3.3 If Provider agrees to provide Assistance, Provider's Contact shall inform Receiver's Contact of the nature of the Assistance that will be provided and approximately when such Assistance will arrive at the Incident Site. Provider's Contact also shall describe in general terms the Emergency Response Resources that will be provided, and shall provide Receiver's Contact with Contact Information for Provider's Director of Operations.
- 3.4 Provider's Emergency Response Resources will not be dispatched to the Incident Site until a five (5) member back up team is ready and available.
- 3.5 When a Request for Assistance has been made orally, Receiver shall follow up such oral request with a written Request for Assistance as soon as practicable.

4 COORDINATION AND CONTROL

- 4.1 During the Period of Assistance, any Assistance rendered by Provider's Employees shall be at the request of, and approved by, Receiver's Director of Operations. Such request and approval shall be communicated directly to Provider's Director of Operations.
- 4.2 At the sole and absolute discretion of Provider's Director of Operations, Provider shall provide such Assistance as has been requested and approved by Receiver's Director of Operations.
- 4.3 When Receiver's Director of Operations has requested, and Provider's Director of Operations has agreed to provide, the Assistance of one or more of Provider's Mine Rescue Teams, Provider's Director of Operations shall provide Receiver's Director of Operations with the name of each member of Provider's Mine Rescue Team who will be providing the Assistance.
- 4.4 Receiver shall provide one (1) person familiar with the Incident Site to act as a guide for Provider's Mine Rescue Team during the Period of Assistance.
- 4.5 The Parties agree that Provider reserves the right to stop providing Assistance at any time during the Period of Assistance. The Parties further agree that Provider reserves the right to withdraw its Emergency Response Resources at any time during the Period of Assistance.
- 4.6 If Provider determines that Assistance will be stopped or Emergency Response Resources will be withdrawn, Provider's Director of Operations shall notify Receiver's Director of Operations as soon as practicable.

5

COMPENSATION RATES

- 5.1 When Provider's Mine Rescue Team Members are Mobilized, for each hour that Provider's Mine Rescue Team Members provide Assistance other than under the conditions described at items 5.2 or 5.3 of this Agreement, the rate of compensation for the purposes of determining Receiver's cost reimbursement to Provider under this Agreement will be based on Provider's Journeyman Rate, or on the Provider's rate according to the Provider's Collective Bargaining Agreement (CBA).
- 5.2 During the Period of Assistance, for each hour that Provider's Mine Rescue Team Members provide Assistance while wearing self-contained breathing apparatus or while they are in the field, the rate of compensation for the purposes of determining Receiver's cost reimbursement to Provider under this Agreement will be two (2) times Provider's Journeyman Rate, or on the Provider's rate according to the Provider's CBA.
- 5.3 During the Period of Assistance, for each hour that Provider's Mine Rescue Team Members provide Assistance at the fresh air base or function in a backup capacity, the rate of compensation for the purposes of determining Receiver's cost reimbursement to Provider under this Agreement will be one and one half (1 ½) times Provider's Journeyman Rate, or on the Provider's rate according to the Provider's CBA.
- 5.4 For the purposes of Receiver's cost reimbursement to Provider under this Agreement, the compensation rates for Provider's Director of Operations and any other of Provider's Employees who provide Assistance during the Period of Assistance shall be determined using the same compensation rates specified for Provider's Mine Rescue Team Members under this Agreement, or on the Provider's rate according to the Provider's CBA.

6

INSURANCE COVERAGE

- 6.1 Each Party shall maintain liability insurance policy(s) that covers activities that it may undertake under this Agreement. The scope of such policy shall include, at a minimum, coverage for the Party's negligent acts, errors, or omissions, and coverage shall be endorsed to provide broad form contractual coverage for meeting, to the extent possible, the indemnity provisions provided in this Agreement. The amount of coverage provided by such policy shall be at least \$10 million in the aggregate.
- 6.2 Each Party shall maintain workers' compensation coverage with Statutory and Employer's Liability coverage with limits of not less than \$500,000.
- 6.3 With regard to Workers' Compensation, each Party hereby waives any claim or right of subrogation it or any of its insurers may have against the other.

7

COST REIMBURSEMENT

- 7.1 Provider shall invoice Receiver for all reimbursable costs that Provider incurs as a result of providing the Assistance. Reimbursable costs shall include costs Provider incurs for:
- (a) transportation, accommodation, meals, and lodging for Provider's Mine Rescue Team Members, Provider's Director of Operations, and other of Provider's Employees who provide Assistance under this Agreement;
 - (b) compensation as determined in Section 5 for Provider's Mine Rescue Team Members, Provider's Director of Operations, and other of Provider's Employees who provide Assistance under this Agreement;
 - (c) repair or replacement of Provider's Emergency Response Resources that were used, or were intended to be used, in connection with providing Assistance under this Agreement and that were consumed, damaged, lost, or stolen during the Period of Assistance.
- 7.2 Provider shall not add a surcharge to any reimbursable costs invoiced to Receiver pursuant to this Agreement.
- 7.3 Provider shall itemize reimbursable costs in reasonable detail on any invoice that Provider submits to Receiver pursuant to this Agreement.
- 7.4 Receiver shall make full payment to Provider within sixty (60) days of receiving any invoice that has been submitted under this Agreement.
- 7.5 Except for the cost recovery as set forth in this Section 7, Provider will not receive any payment or consideration for providing Assistance. The Parties acknowledge and agree that the Provider is not being compensated for providing the Assistance, but is only being reimbursed for the reasonable costs it incurs in providing the Assistance to Receiver under this Agreement. The Parties acknowledge and agree that they have entered into this Agreement in a good faith effort to enhance the availability of Emergency Response Resources during an Emergency.

8 COVENANT NOT TO SUE AND INDEMNIFICATION

- 8.1 Except to the extent caused by the gross negligence, intentional misconduct, or criminal conduct of Provider or Provider's Employees or as prohibited by New Mexico state law, Receiver covenants not to sue Provider or Provider's Employees with respect to any and all claims, demands, damages, actions and/or causes of actions that Receiver or Receiver's Employees may have in law or in equity against Provider or Provider's Employees in connection with the performance and/or nonperformance of the Assistance, whether such claims, demands, damages, actions and/or causes of action are based on negligence, strict liability, breach of contract, or any other theory of liability, including, without limitation, by reason of any loss (including injury resulting in death) of any

person and any damages to, loss of, or theft of property of any person arising out of any act or omission by Provider or Provider's Employees in connection with the Assistance.

8.2 Except to the extent caused by the gross negligence, intentional misconduct, or criminal conduct of Provider or Provider's Employees or as prohibited by New Mexico state law, Receiver shall indemnify, defend, and hold harmless Provider and Provider's Employees from and against all liabilities, losses, claims, demands, damages and expense, including, without limitation, legal expenses, penalties, fines, costs of investigation, remediation or damages to natural resources, asserted against or incurred by Provider or Provider's Employees in connection with the performance and/or nonperformance of the Assistance, including, without limitation, those arising out of injury to any person (including injury resulting in death) and damage to, loss of, or theft of any property of any person, whether arising out of:

- (a) any act or omission by Provider or Provider's Employees in the performance of the Assistance, whether such damage, loss, theft, injury, and/or causes of action are based on negligence, strict liability, breach of contract, or any other theory of liability; or
- (b) any action or neglect by Provider or Provider's Employees, or anyone for whom Provider is responsible at law in connection with the performance of the Assistance.

8.3 The Parties agree that the indemnities in this Agreement will not be limited, restricted, or in any way affected by the amount of insurance that a Party holds.

8.4 In no event shall Provider or Provider's Employees be liable to Receiver or Receiver's Employees for any lost revenues, lost profits, cost of capital, claims of customers, or other special, indirect, consequential or punitive damages.

9 LIMITATIONS ON LIABILITIES

The Parties intend that all limitations on liability established by any applicable law or regulation shall benefit the Parties with respect to their performance under this Agreement, including, but not limited to Section 115 (e) of the Mine Safety and Health Act of 1977, and similar laws and regulations.

10 NOTICE

A Party who becomes aware of a claim or suit that in any way, directly or indirectly, contingently or otherwise, affects or might affect other Parties shall provide prompt notice to the Parties who may be affected by the suit or claim. Each Party reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

11 TERM AND TERMINATION

- 11.1 The term of this Agreement shall be for one year commencing at the Effective Date.
- 11.2 This Agreement shall be renewed automatically for one year renewal terms, unless a Party gives notice, in writing, to the other Parties of the termination its participation in the Agreement not less than forty-five (45) days prior to the anniversary of the Effective Date.
- 11.3 No termination of this Agreement shall affect any rights or liabilities accruing prior to the time of termination.

12 COMPLIANCE WITH GOVERNMENT REGULATIONS

- 12.1 Each Party to this Agreement shall comply with federal, state and local laws, codes, regulations, and ordinances applicable to the Assistance provided under this Agreement.
- 12.2 The qualifications and training of Underground Provider's Mine Rescue Team Members who provide Assistance shall be consistent with 30 C.F.R., Part 49, or any future regulations enacted under 30 C.F.R. regarding mine rescue requirements. The qualifications and training of Surface Provider's Mine Rescue Team Members shall be consistent with practices utilized at surface mining operations.
- 12.3 Underground Provider's Mine Rescue Team Members shall possess and maintain equipment as required by 30 C.F.R., Part 49, or any future regulations enacted under 30 C.F.R. regarding mine rescue requirements. Surface Provider's Mine Rescue Team Members shall possess and maintain equipment consistent with practices utilized at surface mining operations.
- 12.4 Except as provided by item 12.5 of this Agreement, Provider shall provide Provider's Mine Rescue Team Members, Provider's Director of Operations, and other Provider's Employees with all training required by 30 C.F.R., Part 48 before such persons provide the Assistance.
- 12.5 Receiver shall provide Provider's Mine Rescue Team Members, Provider's Director of Operations, and other Provider's Employees with training specific to Receiver's mine as required by 30 C.F.R., Part 48 before such persons provide Assistance at Receiver's mine site.

13 DISPUTE RESOLUTION

Any dispute, controversy or claims arising out of or relating to this Agreement or the breach, termination, interpretation or invalidity thereof (a "Dispute") shall be resolved as follows:

- 13.1 The Parties shall endeavor for a period of two (2) weeks to resolve the Dispute by negotiation. This period may be extended by agreement of the Parties.
- 13.2 If negotiations are unsuccessful, the Parties shall, at the request of either Party, attempt to mediate the Dispute before a mutually acceptable mediator. The mediation shall be completed within three (3) weeks of the request for mediation unless the Parties extend the period in writing.
- 13.3 In the event the Dispute is not successfully mediated, the Parties agree to submit the Dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be administered by the American Arbitration Association. Unless otherwise agreed by the Parties, there shall be one (1) arbitrator who shall be a person with an expertise or background in the subject matter of the Dispute. If the Parties are unable to select an arbitrator within thirty (30) days of the notice of arbitration, the arbitrator shall be selected by the American Arbitration Association. The place of arbitration shall be Santa Fe, New Mexico, or another location mutually agreed upon by the Parties. The arbitrator shall render a decision in writing not more than six (6) months after the appointment of the arbitrator. The arbitrator's decision shall be final and binding on the Parties and not subject to appeal or review. The prevailing Party shall be entitled to an award of costs and attorneys' fees unless the arbitrator determines that each Party should bear its own costs and share the common costs of arbitration.

14 MULTI-PARTY DISPUTES

In the event that a Dispute between the Parties arises out of or is related to a dispute between one of the Parties and a third party ("Related Party Dispute") and there are common issues of law or fact so that there is a possibility of conflicting rulings if the Dispute and the Related Party Dispute are decided in more than one proceeding, the Parties agree as follows:

- 14.1 At the request of any Party, the Dispute and the Related Party Dispute(s) shall be consolidated and determined by a single arbitrator in a single arbitration proceeding pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be administered by the American Arbitration Association.
- 14.2 Any Party seeking consolidation shall give written notice of a request for consolidation to all parties sought to be consolidated (the "Participants") within fifteen (15) days of the notice of arbitration.
- 14.3 If the all Participants are not able to agree upon the selection of an arbitrator to hear the consolidated matter within thirty (30) days after the request for consolidation, the arbitrator shall be selected by the American Arbitration Association. The place of the arbitration shall be Santa Fe, New Mexico, or another location mutually agreed upon by all Participants.

14.4 The arbitrator shall render a written decision not more than six (6) months after appointment of the arbitrator. The arbitrator's decision shall be final and binding on the Participants and not subject to appeal or review.

15 INDEPENDENT RELATIONSHIP; IMPLIED COVENANTS

Neither this Agreement nor any of the provisions of this Agreement are intended to create nor shall be deemed or construed to create a partnership, joint venture, any fiduciary relationship, or any other relationship between the Parties, other than that of independent entities contracting with each hereunder solely for the purpose of effecting the provisions of this Agreement. There are no implied covenants contained in this Agreement other than those of good faith and fair dealing.

16 CONFIDENTIALITY

During the term of this agreement, and for a period of 5 years thereafter, the organizations shall keep as confidential, and not use for any purpose other than for performing under this agreement, any mine maps or other confidential geological or business information provided to them by another organization. These prohibitions shall not apply to information that:

- 16.1 Was in an organization's lawful possession prior to disclosure by the requesting organization.
- 16.2 Is in or hereafter enters the public domain through no fault or action by the organization receiving it.
- 16.3 Is obtained from a third party without violation by the third party of any secrecy obligation and without requirement that the organization hold the information in confidence.

17 EXCLUSIVITY

This Agreement is not exclusive and any Party may enter into a similar agreement with another party.

18 MODIFICATION

This Agreement contains the entire understanding of the Parties and shall not be modified except by an instrument in writing signed by the Parties. Additional Parties may be added to this Agreement by execution hereof. The provisions of this Agreement shall be binding on such additional Parties as of the date of execution hereof by such Parties.

19 PROHIBITION ON THIRD PARTIES AND ASSIGNMENT

- 19.1 This Agreement is for the sole benefit of the Parties and no person or entity has any rights under this agreement as a third-party beneficiary.

19.2 Assignments of benefits and delegations of duties created by this Agreement are prohibited and must be without effect.

20 **GOVERNING LAW**

This Agreement, and the rights, obligations and remedies of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of New Mexico without giving effect to the choice of law rules thereof. Each Party irrevocably and unconditionally submits to non-exclusive jurisdiction of the state and federal courts in the State of New Mexico and the appropriate courts of appeal from such courts for enforcing any decision issued by an arbitrator pursuant to Sections 13 or 14 of this Agreement or for any other matter concerning this Agreement or the activities contemplated hereby.

21 **SEVERABILITY**

If any provision of this Agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms shall not be affected; the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the provision held to be invalid.

22 **DOCUMENT RETENTION**

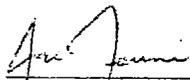
The original of this agreement will be maintained by the New Mexico Mining Association with a copy by the office of the New Mexico State Mine Inspector.

23 **SIGNATURES**

The undersigned warrant and represent that they are duly authorized to bind the entity represented by the undersigned as a Party to this Agreement.

The Parties hereby cause this Agreement to be executed as of the Effective Date,

BHP Billiton New Mexico Coal



Jac Fourie
President

09/10/2010

date

Chevron Mining Inc. – Questa Mine

Phil Howard
Questa Mine General Manager

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This Agreement, and the rights, obligations and remedies of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of New Mexico without giving effect to the choice of law rules thereof. Each Party irrevocably and unconditionally submits to non-exclusive jurisdiction of the state and federal courts in the State of New Mexico and the appropriate courts of appeal from such courts for enforcing any decision issued by an arbitrator pursuant to Sections 13 or 14 of this Agreement or for any other matter concerning this Agreement or the activities contemplated hereby.

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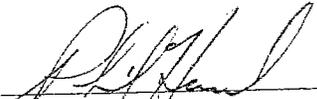
The Parties hereby cause this Agreement to be executed as of the Effective Date,

BHP Billiton New Mexico Coal

Glen Kellow
President and Chief Operating Officer

date

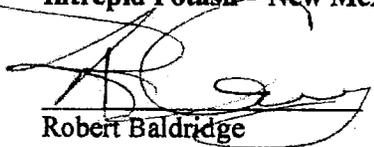
Chevron Mining Inc. – Questa Mine



Phil Howard

2/10/10
date

Intrepid Potash - New Mexico, LLC



Robert Baldrige
General Manager

9/3/2010
date

Lee Ranch Coal Company

Scott Pearson
General Manager

date

Mosaic Potash Carlsbad Inc

Bill Boyer
General Manager

date

**Freeport-McMoRan Copper & Gold
New Mexico Operations**

Richard Mohr
General Manager

date

**U.S. Department of Energy
Carlsbad, NM**

David C. Moody
Carlsbad Field Office Manager

date

**Lordsburg Mining Company
Lordsburg, NM**

Paul J. Moore
General Manager

date