



Fire Department

Aaron Lipski
Chief

Joshua Parish
Assistant Chief

TO: Mayor Cavalier Johnson
City Attorney Tearman Spencer
City Comptroller Aycha Sawa
City Clerk Jim Owczarski

FROM: Chief Aaron Lipski

DATE: July 13, 2023

RE: Contract for *Wisconsin Hazardous Materials Response System Services*
for period covering July 1, 2023 through June 30, 2025

Please sign the three copies (pg 20 or 21) and the extra set of signature pages, if acceptable. I ask that your staff hand-deliver this contract from office to office, so that our staff can pick up the fully executed copies as soon as possible. One original and the extra set of signature pages will be forwarded to Wisconsin Emergency Management, one original will be returned to the City Clerk's Office, and the fire department will retain one original.

Please call our office at 286-8949 after all signatures have been obtained so we can pick up all three executed contracts along with the extra signature pages. Thank you.

Mayor Johnson	Date Signed: _____
City Attorney Spencer	Date Signed: _____
City Comptroller Sawa	Date Signed: _____
City Clerk Owczarski	Date Signed: _____

AL/cf
Attachments
Letters&Memos\HazMatContract July 1, 2023 through June 30, 2025





**CONTRACT FOR
WISCONSIN HAZARDOUS MATERIALS
RESPONSE SYSTEM SERVICES**

JULY 1, 2023, THROUGH JUNE 30, 2025

Between

**STATE OF WISCONSIN
DEPARTMENT OF MILITARY AFFAIRS
DIVISION OF EMERGENCY MANAGEMENT**

And

**CITY OF MILWAUKEE, WISCONSIN
CITY OF RACINE, WISCONSIN
CITY OF FOND DU LAC, WISCONSIN
WASHINGTON COUNTY, WISCONSIN
SHEBOYGAN COUNTY, WISCONSIN**

SOUTHEAST WISCONSIN HAZARDOUS MATERIALS TASKFORCE



**CONTRACT FOR WISCONSIN HAZARDOUS MATERIALS
RESPONSE SYSTEM SERVICES**

1.0 General Contract Information

1.1 Parties: This contract is between the State of Wisconsin, Department of Military Affairs, Division of Emergency Management on the one hand and the City of Milwaukee, City of Racine, City of Fond Du Lac, Washington County, and Sheboygan County, also collectively referred to as the Southeast Wisconsin Hazardous Materials Taskforce on the other for the provision of Wisconsin Hazardous Materials Response System services as described herein and authorized under 1991 Wisconsin Act 104, as codified in §323.70 of the Wisconsin Statutes and as further amended.

1.2 Recitals:

WHEREAS to protect life and property against the dangers of emergencies involving Level A releases, the Division may assign and make available for use in any county, city, village, or town a hazardous materials response system.

WHEREAS the Division desires to enter into this Agreement to establish Contractor as part of the Wisconsin Hazardous Materials Response System, and Contractor desires to be so designated and to enter into this Agreement.

HOWEVER, the parties expressly recognize and attest by this Agreement that neither party intends to create or assume fiduciary or other responsibilities to provide for the containment, cleanup, repair, restoration, and investigation of the environment (air, land, and water) in a hazardous materials incident, which named responsibilities are and shall remain the sole obligations of the Wisconsin Department of Natural Resources under Wis. Stat. §§292.11 and 323.60(4).

1.3 Contract Term: This Agreement runs for two years, commencing July 1, 2023, and ending on June 30, 2025.

1.4 Quarterly Basis: Certain actions are to be taken on a quarterly basis. For the purposes of this Agreement, the quarters are as follows:

First quarter:	July 1 through September 30
Second quarter:	October 1 through December 31
Third quarter:	January 1 through March 31
Fourth quarter:	April 1 through June 30

2.0 Definitions: The following definitions are used throughout this Agreement:

Agreement means this Contract, together with the Exhibits. Exhibits include the following:

- Exhibit A Standard Terms and Conditions (Request for Bids/Proposals) DOA-3054 Form
- Exhibit B Southeast Wisconsin Hazardous Materials Taskforce Budget
- Exhibit C Map of Wisconsin Hazardous Materials Response System
- Exhibit D Certificate of Protection in Lieu of an Insurance Policy, as applicable.

State means the State of Wisconsin.

Department means the State of Wisconsin Department of Military Affairs.

Division means the Division of Emergency Management.

Contractor means the City of Milwaukee, City of Racine, City of Fond Du Lac, Washington County, and Sheboygan County, also collectively referred to as the Southeast Wisconsin Hazardous Materials Taskforce, by which hazardous materials response service or services to Level A releases will be performed under this Agreement.

Emergency means a situation that affects or presents an imminent risk to public health, safety and/or the environment.

Wisconsin Hazardous Materials Taskforce means one of four (4) Taskforces located throughout the State and comprised of Type I, Type II, and Type III hazardous materials teams.

Incident means any actual or imminent threat of release, rupture, fire, or accident that results or has the potential to result in the loss or escape of a hazardous material into the environment.

Level A Release means a release that meets the specifications under Wis. Stat. §323.02(11) of the Wisconsin Statutes.

Type I Hazardous Materials Team includes all Type II and Type III Level A release response capabilities, plus the self-sufficient ability to make entry to and the capability to respond to Weapons of Mass Destruction (WMD) and Chemical, Biological, Radiological, Nuclear, and Explosive (CBRNE) incidents.

Type II Hazardous Materials Team includes all Type III Level A release response capabilities plus the analysis of unknown substances and the capability to make entry to an unknown substance response with the proper number of personnel.

Type III Hazardous Materials Team includes response capabilities to all known chemicals and fuels plus the ability to perform mitigation operations and the capability to make entry for Level A releases and known substances with the proper number of personnel.

Wisconsin Hazardous Materials Response System means the four (4) tiered hazardous materials taskforces comprised of fire departments chosen by the Division to provide Level A hazardous materials response that meets the standards under 29 CFR 1910.120 and/or 29 CFR 1910.134(f), NFPA 472 and 1582, IS 700, ICS 100, 200, 300 and 400, and Wisconsin Firefighter 1.

3.0 Statement of Work

- 3.1 **Services to be provided by Contractor:** During the term of this Agreement, the Contractor agrees to provide hazardous materials response system services to Level A releases through the use of designated Type I, Type II, and Type III Hazardous Materials Teams making up four (4) Taskforce areas throughout the State of Wisconsin as described in Exhibit C, attached hereto and incorporated by reference herein. This Agreement does not include response to Type IV incidents which are locally defined and handled by the authority having jurisdiction.

Contractor's response activities under this Agreement shall be limited to emergency operations relating to hazardous material incidents, reporting and documentation of activities arising from hazardous materials releases/incidents which threaten life, property and/or the environment. Contractor shall not provide under this Agreement any services with respect to the sampling, testing, analysis, treatment, removal, remediation, recovery, packaging, monitoring, transportation, movement of hazardous materials, cleanup, storage and disposal of hazardous materials except as these may be reasonably necessary and incidental to preventing a release or threat of release of a hazardous material or in stabilizing the emergency response incident, as determined by the Contractor.

Contractor shall establish safety perimeters at or near sites and vessels. Contractor shall not be required to locate underground utilities, ensure appropriate traffic control services, conduct hydrological investigations and analysis, or provide testing, removal, and disposal of underground storage tanks at or near the emergency response incident to which the Contractor is dispatched.

The Division and Contractor make no representations to third parties with regard to the ultimate outcome of the services to be provided under this Agreement, but Contractor shall respond to the best of its abilities, subject to the terms of this Agreement.

- 3.2 **Performance Conditions:** Contractor acknowledges that prior to undertaking any

emergency response activity under this Agreement, Contractor shall receive written approval from the Division to proceed with response activities. A Contractor that has previously been providing services under a regional hazardous materials response system agreement with the Division is considered to have received written approval to proceed with response activities. Division approval shall be conditioned upon the Contractor demonstrating to the Division that its employees, equipment and vehicles meet or exceed applicable regulatory requirements.

- 3.3 **Personnel:** Contractor shall provide an adequate number of trained, medically monitored, competent, and supervised personnel as established by the Division and as is reasonably necessary to operate within the safety levels of the Wisconsin Hazardous Materials Response System. Contractor shall meet the standards under 29 CFR 1910.120 and/or 29 CFR 1910.134(f), NFPA 471, 472 and 1582, IS 700, ICS 100, 200, 300 and 400, and Wisconsin Firefighter 1 certification.
- 3.4 **Vehicles and Equipment:** Contractor shall limit its activities to that which can be safely accomplished within the technical limitations of the available vehicles and equipment. Contractor may use equipment and vehicles provided by the Division for Contractor's local use, except as follows. Contractor agrees that in the event of multiple responses, said equipment that is already not committed to a prior response shall be used on a priority basis to respond to a hazardous materials release. Contractor shall provide the Division with a current listing of its equipment assets including the manufacturer, date of purchase, and calibration requirements within 30 days after this Agreement is fully executed and annually thereafter.
- 3.5 **Vehicle and Equipment Use Limitations:** This Agreement in no way limits the Contractor from responding with Division-provided vehicles, equipment, and supplies under local authority, mutual aid agreements, or other contracts under local authority.
- 3.6 **Response Procedures and Limitations:** Contractor recognizes that its obligations under this Agreement are paramount to the State of Wisconsin. Contractor agrees that if local fire response obligations in Contractor's own jurisdiction create limits or unavailable resources, Contractor will seek aid from local jurisdictions to assist in local fire response obligations in Contractor's own jurisdiction.

Contractor's obligation to provide services hereunder shall arise, with respect to specific response actions, upon receipt of an emergency response request pursuant to mutually approved Standard Operating Guidelines provided in Subsection 3.8. These guidelines will be maintained in a mutual aid support system that will be used to assess readiness.

- 3.7 **Right of Refusal:** If, on occasion, a response under this Agreement would temporarily place a verifiable undue burden on the Contractor because Contractor's

resources are otherwise inadequate or unavailable and mutual aid is unavailable for a hazardous materials response within the State, then, if notice has been provided to the Division, the Contractor may decline a request for hazardous material response system services.

- 3.8 **Standard Operating Guidelines:** Contractor and Division agree that hazardous materials response system operations will be conducted in accordance with Wisconsin Hazardous Materials Response System Operations Plan, and "Call Out Procedure" that will be mutually approved by the parties to this Agreement.
- 3.9 **Mutual Aid Box Alarm System (MABAS):** Contractor is highly encouraged to participate in the MABAS-WI program. At a minimum and absent MABAS-WI participation, Contractor will be qualified and credentialed under all NIMS standards for hazardous materials.
- 3.10 **Standardized Equipment Reports:** In order to prepare, plan, and respond to the dangers of emergencies involving Level A releases, the Division shall require standardized equipment purchases and inventory for the Wisconsin Hazardous Materials Response System. Contractor shall update, on an annual basis, the Standardized Equipment that provides a current inventory of all hazardous materials equipment assets including but not limited to the manufacturer, date of purchase, and calibration requirements. The Contractor will input equipment inventory on the Division's secure ImageTrend Elite website, <https://wisconsinfire.imagetrendelite.com/elite/organizationwisconsinfire/> or equivalent. The annual Equipment Inventory shall be updated after January 1, or when new equipment is added during the calendar year. Failure to submit timely Equipment Inventory may result in the withholding of quarterly Annual Allocation payments provided for under this Agreement.
- 3.11 **Operating Expenditure Reports:** In order to prepare, plan, and respond to the dangers of emergencies involving Level A releases, the Division shall collect standardized operating expenditure information from Contractor including but not limited to wages and stipend costs. Contractor shall provide the Division, on a quarterly basis, with an Operating Expenditure Report that provides a current listing of its hazardous materials team operating expenditures on an electronic spreadsheet developed by the Division. The Division will input Contractor's operating expenditures on the Division's secure WebEOC website located at wi.webeocasp.com, or equivalent. The quarterly Operating Expenditure Reports shall be provided to the Division no later than thirty (30) days after the end of each quarter. Failure to submit timely Operating Expenditure Reports may result in the withholding of quarterly payments under this Agreement until such report is received.
- 3.12 **Hazardous Materials Incident Reporting:** To prepare, plan, and respond to the

dangers of emergencies involving Level A releases, the Division shall collect accurate, actual, and standardized hazardous materials assist and response data. Further, Contractor shall report all hazardous materials incidents (local/county or State) on the Division's secure ImageTrend Elite website, <https://wisconsinfire.imagetrendelite.com/elite/organizationwisconsinfire/> or equivalent. The Hazardous Materials Incident Report shall be completed and submitted no later than five (5) business days after the end of the incident. Failure to submit timely Hazardous Materials Incident Reports may result in the withholding of quarterly payments under this Agreement until the report is submitted.

- 3.13 **Wisconsin Hazardous Material Response System Member Rosters:** Under Subsection 5.11, members of the Wisconsin Hazardous Materials Response System are considered state employees for worker's compensation purposes. It is paramount that the Division has a current listing of all members in order to ensure coverage. Contractor shall provide the Division, on a quarterly basis, with a current listing of its members on an electronic spreadsheet developed by the Division. Failure to submit timely member rosters may result in the withholding of quarterly payments under this Agreement.

4.0 Advisory Committee

- 4.1 There are currently four agreements establishing separate Wisconsin hazardous materials taskforces. Section 4 of each such agreement authorizes the creation of a committee that will advise the Division on matters relating to the exercise of the Division's discretion.
- 4.2 The committee shall be advisory only.
- 4.3 Committee membership shall be made up of two representatives from each type of team (Type 1, Type 2 and Type 3) and one at-large representative.
- 4.4 Membership may be drawn from any of the contractors of any of the four taskforces.
- 4.5 The members of the advisory committee shall be appointed by the Board of Directors of the Wisconsin State Fire Chiefs Association.

5.0 Contractor Annual Allocation, Reimbursement, and Grants

There are two types of Contractor funding under this Agreement: (1) Annual Allocation based on the Type I, Type II or Type III Level A release capabilities provided by Contractor and (2) Team Response Costs. Each of these is discussed below.

5.1 **Annual Allocation and Quarterly Payments:** As provided under Wis. Stat. §323.70(2) of the Wisconsin Statutes, Contractor will be subsidized annually, commencing 7/1/2023 and for State Fiscal Years 2022/2023 through 2023/2024, under this Agreement for its approved annual allocation as described in "Exhibit B", attached, and incorporated by reference. The payments shall be made to Contractor on a quarterly basis, with the first payment to be made at the end of the first quarter, if all required quarterly reports have been submitted for the quarter at issue and if the Agreement has not been terminated or canceled with respect to the Contractor. If the Agreement has been terminated or canceled with respect to the Contractor prior to the end of the Agreement, payment of annual allocations will be made pursuant to Section 8.8. Funding amounts will be based by Type I, Type II, and Type III Hazardous Materials Team designation. The Annual Allocation is intended to cover direct and indirect costs necessary to ensure the proper number of trained personnel per shift depending on the type of response, a stipend per response system member as well as baseline, maintenance, and exit physicals for each response system member. Quarterly Annual Allocation payments to Contractor shall be made from the appropriation account under Wis. Stat. § 20.465(3)(dd) of the Wisconsin Statutes.

5.1.1 Funds allocated under Subsection 5.1 of this Agreement shall supplement existing, budgeted monies of the Contractor to provide the services specified herein and may not be used to replace, decrease, or release for alternative purposes the existing, budgeted monies of or provided to the Contractor.

Further, funds allocated under Subsection 5.1 of this Agreement shall not be used by Contractor to supplement, offset, replace, decrease, or release any budgetary obligations for other municipal departments not directly connected to this Agreement.

5.2 **Southeast Wisconsin Hazardous Materials Taskforce Response Costs and Reimbursement:**

5.2.1 Pursuant to Wis. Stat. §323.70(3) of the Wisconsin Statutes and as set forth in this Section 5.2.1, Contractor shall be reimbursed for reasonable and necessary response costs and expenses incurred in responding to an emergency involving a Level A release or potential Level A release pursuant to this Agreement.

Taskforce response costs may include, but are not limited to:

(1) Reimbursement for use of Vehicle(s) and Apparatus: Contractor shall be reimbursed for the approved use of its vehicles and equipment at FEMA-established rates.

(2) Personnel Expenses: Contractor's team response personnel expenses

which are approved and authorized under this Agreement are reimbursable at the rates described as follows:

a) For full-time fire departments, at the actual cost of personnel expenses.

b) For part-time and volunteer fire departments or team personnel, at the average over-time hourly rates for the three geographically nearest full-time fire departments.

Team response personnel expenses shall be billed to the nearest one-fourth (1/4) hour work period. Personnel expenses may reflect replacement personnel costs and indirect charges/costs for wage, fringe, death, and duty disability retirement benefits.

(3) Emergency Expenses: Contractor's necessary and reasonable emergency expenses related to services rendered under this Agreement are reimbursable. All such expenses must be based on actual expenditures and fully documented by the Contractor. The Division reserves the right to deny any reimbursement of unjustifiable Contractor expenditures.

5.2.2 If the Division determines that an emergency requiring a response per this Agreement existed, the Division will issue reimbursement for response costs to Contractor within 60 days after receiving a complete application for reimbursement from Contractor on a form prescribed by the Division, but only if the completed application is received by the Division within 45 days after the conclusion of deployment for a response under this Agreement.

5.3 **Training Costs**: In addition to the Annual Allocation, funding may be available to Contractor through the Division's training and equipment grants. Applications shall be made via "E-Grants" and will be available to Contractor based upon established criteria. The Division makes no representations that funding will be available to any or all parties.

5.4 **Duty Disability Premium Increases**: The Division shall reimburse Contractor for costs incurred by Contractor for any increase in contributions for duty disability premiums as set forth in Wis. Stat. § 323.70(3m) for employees who received duty disability benefits because of an injury incurred while performing duties as a member of the Southeast Wisconsin Hazardous Materials Taskforce while engaging in a response to a Level A emergency under this Agreement.

5.5 **Standard Equipment Purchases and Cache**: The Division intends to standardize equipment purchases for the Wisconsin Hazardous Materials Response System. Contractor shall provide the Division with a current listing of its equipment assets

including the manufacturer, date of purchase, and calibration requirements. The Division will develop a standardized equipment list including vendor information.

Contractor may make equipment purchase requests to the Division by submitting an "E-Grants" request with supporting documentation. The Division makes no representations that funding will be available to all parties.

The Division intends to develop and maintain an equipment cache. When developed, Contractor may borrow specific equipment from the equipment cache in the event of an equipment failure requiring repair of Contractor's equipment.

- 5.6 **Minimum Appropriation:** The Division has requested in its State Fiscal Years 2023-2025 budget a sum to cover the annual allocation for those fiscal years as described in "Exhibit B" to this Agreement. If at least that amount is appropriated, then that amount shall be the minimum amount payable annually to response teams, with any additional amounts that might be appropriated payable pro rata to the response teams as part of the annual allocation. The minimum contract annual allocation does not, however, include Contractor's response costs as specified in Subsection 5.2 of this Agreement.
- 5.7 **Full Payment and Release:** The Division's reimbursement(s) shall be full payment for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work authorized under this Agreement. Acceptance of payment by the Contractor shall operate as a release of the Division of all claims by Contractor for reimbursement of its response costs.
- 5.8 **Approval:** Contractor, when acting under this Agreement, may not participate in an emergency response to a Level A release without following the Division-approved "Call Out Procedure." Contractor agrees to make reasonable and good faith efforts to minimize costs.
- 5.9 **Retirement System Status and Tax Payments:** Contractor and its employees are not entitled under this Agreement to Division contribution to any retirement benefit or other benefit offered by Contractor or the State. Contractor shall be responsible for payment/withholding of any applicable federal, Social Security and State taxes.
- 5.10 **Worker's Compensation:** A member of the Southeast Wisconsin Hazardous Materials Taskforce who is acting under the scope of this Agreement is an employee of the State for purposes of worker's compensation under §323.70(5) of the Wisconsin Statutes. For all other purposes, the member remains Contractor's employee.
- 5.11 **Payment of Contractor's Obligations:** Contractor agrees to make payment promptly, as just, due, and payable to all persons furnishing services, equipment or

supplies to Contractor. If Contractor fails, neglects, or refuses to pay any such claims as they become due and for which the Division may be held liable, the proper officer(s) representing the Division, after ascertaining that the claims are just, due and payable, may, but shall not be required to, pay the claim and charge the amount of the payment against funds due Contractor under this Agreement. The payment of claims in this manner shall not relieve Contractor of any duty with respect to any unpaid claims.

5.12 **Dual Payment:** Contractor shall not be compensated for work performed under this Agreement by any state agency or person(s) responsible for causing a hazardous materials emergency except as approved and authorized under this Agreement.

5.13 **Taskforce Members:** Members of the Southeast Wisconsin Hazardous Materials Taskforce are firefighters and therefore are considered protective occupation employees.

6.0 Liability and Indemnity

Nothing contained in this Agreement is intended to limit any immunities and rights of any party available under Wis. Stat. §§ 345.05, 893.80, 893.82 and 895.46 or any other constitutional or statutory provision or common law. Such immunities and rights are expressly reserved to the parties.

6.1 **Scope:** During operations authorized by this Agreement, Contractor employees who are part of Contractor's emergency management program shall be agents of the State and protected and defended against tort liability under Wis. Stat. §323.41. For purposes of Wis. Stat. § 895.46(1), members of the Southeast Wisconsin Hazardous Materials Taskforce shall, during authorized operations, be considered agents of the State and the State will indemnify such employees as required under Wis. Stat. § 895.46(1). For purposes of this section, operations means activities, including travel, directly related to a particular emergency response involving a hazardous material response/incident by a hazardous materials response system team. Operations also include specialized training activities provided under this Agreement to the members of a hazardous materials response system team.

6.2 **Civil liability exemption; hazardous material and local emergency response team:** Under Wis. Stat. § 895.483(1), a Hazardous Materials Taskforce, a member of such a Taskforce, and a local agency, as defined in Wis. Stat. § 323.70(1)(b), that contracts with the Division under Wis. Stat. § 323.70 are immune from civil liability for acts or omissions related to carrying out responsibilities under this Agreement.

7.0 Insurance Provisions

- 7.1 **General Liability Insurance:** Contractor shall maintain, at its own expense, and keep in effect during the term of this Agreement, commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this Agreement. Minimum coverage is one million (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. The State reserves the right to require higher or lower limits where warranted.

If Contractor is self-insured or uninsured, a Certificate of Protection in Lieu of an Insurance Policy shall be submitted to the Division certifying that Contractor is protected by a Self-Funded Liability and Property Program or alternative funding source(s), attached hereto as "Exhibit D".

- 7.2 **Automobile Liability:** Contractor shall obtain and keep in effect automobile liability insurance for all owned, non-owned and hired vehicles that are used in carrying out this Agreement. This coverage may be written in combination with the commercial liability and property damage insurance mentioned in Subsection 7.1. Minimum coverage shall be one million (\$1,000,000) per occurrence combined single limit for automobile liability and property damage. The State reserves the right to require higher or lower limits where warranted.

If Contractor is self-insured or uninsured, a Certificate of Protection in Lieu of an Insurance Policy shall be submitted to the Division certifying that Contractor is protected by a Self-Funded Liability and Property Program, or alternative funding source(s) attached hereto as "Exhibit D".

- 7.3 **Notice of Cancellation or Change:** Contractor agrees that there shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days' written notice to the Division.

- 7.4 **Certificate(s) of Insurance:** As evidence of the insurance coverage required by this Agreement, Contractor shall provide to the Wisconsin Department of Military Affairs' General Counsel an insurance certificate indicating this coverage, countersigned by an insurer licensed to do business in Wisconsin, covering the period of the Agreement or, if self-insured or uninsured, a Certificate of Protection in Lieu of Insurance Policy prior to commencement of this Agreement and annually thereafter.

8.0 **Standard Contract Terms, Conditions and Requirements**

- 8.1 **Disclosure of Independence and Relationship:** Contractor certifies that no relationship exists between its membership in the Hazardous Materials Response System, the State, or the Division that interferes with fair competition or is a conflict of interest, and no relationship exists between the Contractor and its employees and another person or organization that constitutes a conflict of interest with respect

to a state contract.

Contractor agrees as part of this Agreement that, during performance of this Agreement, it will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the Wisconsin Department of Military Affairs or has interests that are adverse to the Department.

The Department of Administration may waive the provisions of the previous two paragraphs, in writing, if those activities of the Contractor will not be adverse to the interests of the State.

- 8.2 **Dual Employment:** Section 16.417 of the Wisconsin Statutes prohibits an individual who is a state employee or who is retained as a consultant full-time by a state agency from being retained as a consultant by the same or another agency where the individual receives more than \$12,000 as compensation. This prohibition applies only to individuals and does not include corporations or partnerships.
- 8.3 **Employment:** Contractor will not engage the service of any person or persons now employed by the State, including any department, commission, or board thereof, to provide services relating to this Agreement without the written consent of the employer of such person or persons and the Department of Military Affairs and the Division.
- 8.4 **Conflict of interest:** Private and non-profit corporations are bound by Wis. Stat. §§ 180.0831 and 181.225 regarding conflicts of interest by directors in the conduct of state contracts.
- 8.5 **Recordkeeping and Record Retention:** The Contractor shall establish and maintain adequate records of all expenditures incurred under the Agreement. All records must be kept in accordance with generally accepted accounting principles and be consistent with federal and state laws and local ordinances. The Division, the federal government, and their duly authorized representatives shall have the right to audit, review, examine, copy and transcribe any pertinent records or documents relating to any contract resulting from this Agreement held by Contractor. The Contractor shall retain all documents applicable to the Agreement for a period of not less than six (6) years after the final payment is made or longer where required by law.
- 8.6 **Taskforce Member Removal:** If an individual Southeast Hazardous Materials Taskforce member is substantiated to have been negligent or unresponsive with respect to the requirements under this Agreement, the Division, after consultation with Contractor and Contractor's Fire Commission/Board, may recommend the removal of this member from the Taskforce. A request by the Division to dismiss a

Taskforce member shall not constitute an order to discipline or discharge the employee. All actions taken by the Contractor and/or fire department management with regard to employee discipline shall be at the sole discretion of the Contractor and/or fire department management.

8.7 **Hold Harmless:** Contractor will indemnify, defend against, and hold harmless the Division of Emergency Management, the Department of Military Affairs, and the State of Wisconsin for any claims arising from any disputes any Local Agency may have with its employees. This shall include, but not be limited to, charges of discrimination, harassment, and discharge without just cause.

8.8 **Termination of Agreement:**

Contractor may terminate this Agreement at will by delivering ninety (90) days' written notice to the Division of intent to terminate, during which 90-day period Contractor must continue to provide services under the Agreement. If the Agreement terminates at the end of a quarter based on Contractor's 90-day notice of termination, Contractor will be paid its quarterly payment from the Annual Allocation, but no further Annual Allocation payments will be made. If the Agreement terminates during a quarter based on Contractor's 90-day notice of termination, Contractor will be paid a prorated amount of its Annual Allocation for that quarter, but no further Annual Allocation payments will be made.

The Division may terminate this Agreement at will effective upon delivery of written notice to the Contractor, under any of the following conditions:

- (1) Division funding from federal, state, or other sources is not obtained and/or continued at levels sufficient to allow for payments under this Agreement.
- (2) Federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments by this Agreement.
- (3) Any license or certification required by law or regulation to be held by the Contractor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- (4) Failure of Contractor to comply with the terms, conditions, and specifications of the Agreement.

Any termination of the Agreement shall be without prejudice to any obligations or

liabilities of either party already accrued prior to such termination, except as provided elsewhere in the Agreement.

- 8.9 **Cancellation:** The continuation of payments under this Agreement beyond the limits of the funds already available is contingent upon the future availability of funds to support such payments. The State of Wisconsin reserves the right to immediately cancel any contract in whole or in part without penalty due to non-appropriation of funds. Upon cancellation, response costs and expenses incurred up to that date will be reimbursed to the extent of recovery from the Responsible Party and any appropriated amounts available and a prorated amount of annual allocations will be made to the extent funds have been appropriated.
- 8.10 **Prime Contractor and Minority Business Subcontractors:** In the event Contractor subcontracts for supplies and/or services, any subcontractor must abide by all terms and conditions of the Agreement. The Contractor shall be responsible for performance of services authorized by this Agreement whether or not subcontractors are used.
- Contractor is encouraged to purchase services and supplies when/if applicable from minority businesses certified by the Wisconsin Department of Development, Bureau of Minority Business Development.
- 8.11 **Executed Contract to Constitute Entire Agreement:** The written Agreement with referenced Exhibits and attachments shall constitute the entire agreement of the parties regarding the subject matter of the Agreement and supersedes all prior discussions, negotiations, and agreements, written or oral, with respect to the subject matter of this Agreement.
- 8.12 **News Releases:** News releases pertaining to the negotiation of this Agreement shall not be made without the prior approval of the Division.
- 8.13 **Applicable Law:** This Agreement shall be governed under the laws of the State of Wisconsin. The Contractor and State shall at all times comply with and observe all federal and state laws, rules and regulations and ordinances which are in effect during the period of this Agreement, and which may in any manner affect performance of obligations under this Agreement.
- 8.14 **Assignment:** No right or duty, in whole or in part, of the Contractor under this Agreement may be assigned or delegated without the prior written consent of the State of Wisconsin.
- 8.15 **Successors in Interest:** The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties to the Agreement and their respective successors and assigns.

- 8.16 **Notifications:** Contractor shall immediately report by telephone and in writing any demand, request, or occurrence that reasonably may give rise to a claim against the State, its officers, Divisions, agents, employees, and members. Such reports shall be directed to:

ATTN: Administrator
Division of Emergency Management
WI Dept. of Military Affairs
PO Box 7865
Madison, WI 53707-7865
Telephone #: (608) 242-3232
FAX #: (608) 242-3247

Copies of such written reports shall also be sent to:

ATTN: State General Counsel
WI Dept. of Military Affairs
PO Box 8111
Madison, WI 53708-8111

- 8.17 **Severability:** If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 8.18 **Amendments:** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written approval of Division and Contractor and approval, by passive review or otherwise, of the Wisconsin Joint Committee on Finance. In the event additional funding is provided for the four taskforces (Northwest, Northeast, Southwest and Southeast) as a group, the provisions in this Agreement and the agreements establishing the three other taskforces regarding payment to contractors shall be modified by written agreement of the parties to reflect the additional funding consistent with any legislative directive.
- 8.19 **Approval Authority:** Contractor's representatives certify by their signature below that they have the necessary and lawful authority to enter into contracts and agreements on behalf of the Contractor.
- 8.20 **Insufficient Funds:** The obligation of the Contractor under this Agreement is contingent upon the availability and allotment of funds by the Division to Contractor and Contractor may, upon thirty (30) days prior written notice, terminate this contract if funds are not available.

- 8.21 **No Waiver:** No failure to exercise, and no delay in exercising, any right, power or remedy, including payment, under this Agreement, on the part of the Division, State, or Contractor, shall operate as a waiver of it, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise of it or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the Division, State, or Contractor, in the written waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.
- 8.22 **Construction of Agreement:** This Agreement is intended to be solely between the parties. No part of the Agreement shall be construed to add, supplement, amend, abridge, or repeal existing rights, benefits, or privileges of any third party or parties, including but not limited to employees of either of the parties.
- 8.23 **Disparity:** In the event of a discrepancy, difference or disparity in the terms, conditions or language contained in the Agreement, on the one hand, and its Exhibits on the other, it is agreed between the parties that the language in Exhibit A to this Agreement, shall control.
- 8.24 **Amendment to Comply with Law.** If any laws are enacted that affect the subject matter of this Agreement, the Parties agree to amend this Agreement to reflect the substance of such laws as soon as practicable. Such amendment must first be submitted to the Joint Finance Committee for passive or actual approval prior to being fully executed.
- 8.25 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed the original, but all of which together shall constitute one and the same instrument.

Approving Signatures:

ON BEHALF OF THE DIVISION OF EMERGENCY MANAGEMENT (DIVISION)

Dated this ____ day of _____, 2023.

Greg Engle, Division Administrator

**On Behalf of the City of Milwaukee
A Municipal Corporation**

Dated this ____ day of _____, 2023

Signature: _____

Printed Name: Cavalier Johnson

Title: Mayor

Address: 200 East Wells Street, Room 201

City/State: Milwaukee, WI Zip: 53202

On Behalf of the City of Milwaukee

Dated this ____ day of _____, 2023

Signature: _____

Printed Name: Jim Owczarski

Title: City Clerk

Address: 200 East Wells Street, Room 205

City/State: Milwaukee, WI Zip: 53202

On Behalf of the City of Milwaukee

Dated this ____ day of _____, 2023

Countersigned: _____

Printed Name: Aycha Sawa

Title: City Comptroller

Address: 200 East Wells Street, Room 404

City/State: Milwaukee, WI Zip: 53202

On Behalf of the City of Milwaukee Fire Department

Dated this ____ day of _____, 2023

Signature: _____

**Printed Name: Aaron Lipski
Title: Fire Chief
Address: 711 West Wells Street
City/State: Milwaukee, WI Zip: 53233**

Approved as to form:

Dated this ____ day of _____, 2023

Signature: _____

**Printed Name: Tearman Spencer
Title: City Attorney
Address: 200 East Wells Street, Room 800
City/State: Milwaukee, WI Zip: 53202**

**On Behalf of the City of Racine
A Municipal Corporation**

Dated this ____ day of _____, 2023

Signature: _____

**Printed Name: Cory Mason
Title: Mayor
Address: 730 Washington Avenue
City/State: Racine, WI Zip: 53403**

On Behalf of the City of Racine

Dated this ____ day of _____, 2023

Signature: _____

**Printed Name: Tara McMenammin
Title: City Clerk
Address: 730 Washington Avenue
City/State: Racine, WI Zip: 53403**

On Behalf of the City of Racine

Dated this ____ day of _____, 2023

Signature: _____

**Printed Name: Kathleen Fischer
Title: Finance Director
Address: 730 Washington Avenue
City/State: Racine, WI Zip: 53403**

On Behalf of the City of Racine Fire Department

Dated this ____ day of _____, 2023

Signature: _____

Printed Name: Steve Hansen

Title: Fire Chief

Address: 810 8th Street

City/State: Racine, WI Zip: 53403

Approved as to form:

Dated this ____ day of _____, 2023

Signature: _____

Printed Name: Scott Letteney

Title: City Attorney

Address: 730 Washington Avenue

City/State: Racine, WI Zip: 53403

On Behalf of the City of Fond du Lac

Dated this ____ day of _____, 2023

Signature: _____

Printed Name: Joe Moore

Title: City Manager

Address: 160 South Macy Street

City/State: Fond du Lac, WI Zip: 54935

On Behalf of Washington County

Dated this ____ day of _____, 2023

Signature: _____

Printed Name: Josh Schoemann

Title: County Executive

Address: 432 East Washington Street

City/State: West Bend, WI Zip: 53095

On Behalf of the Boltonville Fire Department in Washington County

Dated this ____ day of _____, 2023

Signature: _____

Printed Name: Reginald Rochwite

Title: President, Boltonville Fire Department

Address: 9336 Bolton Drive

City/State: Kewaskum, WI Zip: 53040

On Behalf of the Boltonville Fire Department in Washington County

Dated this ____ day of _____, 2023

Signature: _____

Printed Name: Jada Straight

Title: Secretary, Boltonville Fire Department

Address: 9336 Bolton Drive

City/State: Kewaskum, WI Zip: 53040

On Behalf of Sheboygan County

Dated this ____ day of _____, 2023

Signature: _____
Printed Name: Steven Steinhardt
Title: Director of Emergency Management
Address: 508 New York Avenue
City/State: Sheboygan, WI **Zip:** 53081

On Behalf of Sheboygan County

Dated this ____ day of _____, 2023

Signature: _____
Printed Name: Alayne Krause
Title: County Administrator
Address: 508 New York Avenue
City/State: Sheboygan, WI **Zip:** 53081

Exhibit A

- 1.0 GUARANTEED DELIVERY:** Failure of the Contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.
- 2.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of Wis. Stat. § 77.66, and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- 3.0 ANTITRUST ASSIGNMENT:** The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the Contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.
- 4.0 ASSIGNMENT:** No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.
- 5.0 NONDISCRIMINATION:** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. §. 51.01(5), sexual orientation as defined in Wis. Stat. § 111.32(13m) or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor is exempt from having to file an affirmative

action plan but must request the exemption within fifteen (15) working days from the date the Agreement is fully executed.

- 5.1 The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.
 - 5.2 Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.
 - 5.3 Pursuant to s. 16.75(10p), Wis. Stats., contractor agrees it is not, and will not for the duration of the contract, engage in a prohibited boycott of the State of Israel as defined in s. 20.931(1)(b). State agencies and authorities may not execute a contract and reserve the right to terminate an existing contract with a company that is not compliant with this provision. This provision applies to contracts valued \$100,000 or over.
 - 5.4 Pursuant to 2019 Wisconsin Executive Order 1, contractor agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.
- 6.0 **CANCELLATION:** The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.
- 7.0 **VENDOR TAX DELINQUENCY:** Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.
- 8.0 **PUBLIC RECORDS ACCESS:** Pursuant to Wis. Stat. §19.36 (3), all records of the contractor that are produced or collected under this contract are subject to disclosure pursuant to a public records request. Upon receipt of notice from the State of Wisconsin of a public records request for records produced or collected under this contract, the contractor shall promptly provide the requested records to the contracting agency. Contractor agrees to contact the State promptly upon receiving a request for information under the public records law and comply with the State's instructions on how to respond to the request. The contractor,

following final payment, shall retain all records produced or collected under this contract for six (6) years.

- 9.0 DISCLOSURE:** If a state public official (Wis. Stat. § 19.42), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to Wis. Stat. § 19.45(6), before signing the contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, Wis. Stat. § 16.417.

- 10.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

- 11.0 FORCE MAJEURE:** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

- 12.0 VENDOR TAX DELINQUENCY:** Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

Exhibit B

SOUTHEAST WISCONSIN
HAZARDOUS MATERIALS
TASKFORCE

***WISCONSIN HAZARDOUS
MATERIALS RESPONSE SYSTEM***

BUDGET

CONTRACTORS:

CITY OF MILWAUKEE, WISCONSIN
CITY OF RACINE, WISCONSIN
CITY OF FOND DU LAC, WISCONSIN
WASHINGTON COUNTY, WISCONSIN
SHEBOYGAN COUNTY, WISCONSIN

TEAM NAME	TEAM TYPE	BUDGET 7/01/23- 6/30/24	BUDGET 7/1/24- 6/30/25
CITY OF MILWAUKEE	TYPE I	\$250,211.77	\$250,211.77
CITY OF RACINE	TYPE II	\$98,190.25	\$98,190.25
CITY OF FOND DU LAC	TYPE III	\$16,514.45	\$16,514.45
WASHINGTON COUNTY	TYPE III	\$16,514.45	\$16,514.45
SHEBOYGAN COUNTY	TYPE	\$16,514.45	\$16,514.45

**NOTE: CHECKS WILL BE MADE PAYABLE TO EACH CONTRACTOR NOTED
ABOVE ON A QUARTERLY BASIS AS SPECIFIED IN THE AGREEMENT.**

Exhibit C



Exhibit D

MUNICIPAL CERTIFICATES OF INSURANCE