



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

JULY 1, 201~~7~~⁵ THROUGH JUNE 30, 201~~9~~⁷

Between

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

And

CITY OF _____, WISCONSIN
CITY OF _____, WISCONSIN
_____ COUNTY, WISCONSIN
_____ COUNTY, WISCONSIN

ALSO COLLECTIVELY REFERRED TO AS THE
_____ WISCONSIN HAZARDOUS MATERIALS TASKFORCE



DATE: June 30, 201~~7~~⁵

**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 (hereinafter "Division") and the City of _____, the City of _____, _____ County, and _____ County, Wisconsin also collectively referred to as the _____ Wisconsin Hazardous Materials Taskforce (hereinafter "Contractor") 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, in order 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 to assume fiduciary responsibilities to provide for the containment, cleanup, repair, restoration and investigation of the environment (air, land and water) in a Hazardous Substance Incident, which named responsibilities are and shall remain the sole obligations of the Wisconsin Department of Natural Resources under §§292.11 and 323.60(4), Wis. Stats.

1.3 **Contract Term:** This Agreement shall continue for two years commencing July 1, 201~~7~~⁵ through June 30, 201~~7~~⁹.

2.0 Definitions

2.1 **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 _____ 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 Madison, the City of _____, the City of _____, _____ County, and _____ County, Wisconsin also collectively referred to as the _____ Wisconsin Hazardous Materials Taskforce by which hazardous materials response service or services to Level A releases will be performed under this Agreement. Under §323.70(2), Stats., the Division may only contract with a local agency.

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

Hazardous Materials Response System 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 §323.02(11) of the Wisconsin Statutes.

Level B Release means a release that meets the specifications under §323.02(12) of the Wisconsin Statutes.

Local Agency means an agency of a county, city, village, or town, including a municipal fire department.

Responsible Party means any person, as defined in s. 299.01 (10), Stats., or 42 USC 9607(a), who is responsible for the emergency involving a release or potential release of a hazardous substance under s. 323.70 (4) or 323.71 (4), Stats., or a person who is found to have abandoned containers, as defined under s. 292.41 (1), Stats., that are releasing or discharging a hazardous substance to which a response team was called to respond.

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 response 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, 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, insure 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 hazardous materials services to be provided, 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 Contract 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 472 and 1582, IS 700, ICS 100, 200, 300 and 400, and Wisconsin Firefighter 1.
- 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, however, Contractor agrees that in the event of multiple responses, said equipment which 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.
- 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 herein. 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 provide the Division, on a quarterly basis, with a current listing of all hazardous materials equipment assets including but not limited to the manufacturer, date of purchase, and calibration requirements on an electronic spreadsheet developed by the Division. The Division will input Contractor's equipment inventory list including vendor information on the Division's secure E-Sponder@WebEOC website located at <https://secure.wiesponder.com/wi.webeocasp.com>, or equivalent. The quarterly Standardized Equipment Reports shall be provided to the Division no later than thirty (30) days after the end of each quarter. Failure to submit timely Standardized Equipment Reports may result in the withholding of quarterly payments under this Agreement.

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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 biannual basis, with 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 E-Sponder@WebEOC website located at <https://secure.wiesponder.com/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 reporting period. Failure to submit timely Operating Expenditure Reports may result in the withholding of quarterly payments under this Agreement

3.12 Hazardous Materials Assist and Response Quarterly Reports: In order 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 continue to provide the Division, on a quarterly basis, with a current listing of all hazardous materials assist and response data. The Division will input Contractor's assists and response data on the Division's secure E-Sponder@WebEOC website located at <https://secure.wiesponder.com/wi.webeocasp.com>, or equivalent. The quarterly Hazardous Material Assist and Response Reports shall be provided to the Division no later than thirty (30) days after the end of each quarter. Failure to submit timely

Hazardous Material Assist and Response Reports may result in the withholding of quarterly payments under this Agreement.

3.13 Wisconsin Hazardous Material Response System Member Rosters: Under Subsection 4.12 herein, 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 assure 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 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 designated Contractor and (2) Team Response Costs. Each of these is discussed more fully below.

4.1 Annual Allocation and Quarterly Payments: As provided under §323.70(2) of the Wisconsin Statutes, Contractor will be subsidized annually, commencing 7/1/2015~~7~~ and for State Fiscal Years 2015~~7~~/18~~6~~ through 2016~~8~~/19~~7~~, under this Agreement for its approved Annual Allocation as described in "Exhibit B", attached hereto and incorporated by reference herein. The payments shall be made to Contractor on a quarterly basis. Funding amounts will be based by Type I, Type II, and Type III Hazardous Materials Team designation. The Annual Allocation is intended to covers costs for 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. Said Quarterly Annual Allocation payments to Contractor shall be made from the appropriation account under §20.465(3)(dd) of the Wisconsin Statutes.

4.2 Annual Allocation Expenditures: It is the intent of the Division that funds allocated under Subsection 4.1 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, the Division intends that funds allocated under Subsection 4.1 of this Agreement shall not be used by the local agency to supplement, offset, replace, decrease or release any budgetary obligations for other municipal departments not directly connected or attached to Contractor.

4.3 Team Response Costs and Reimbursement: Pursuant to §323.70(3) of the Wisconsin Statutes, Contractor shall be reimbursed for reasonable and necessary

team response costs incurred in responding to a Level A release under this Agreement. Such team 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.

Pursuant to §323.70(3) Wis. Stats., Contractor shall be reimbursed by the Division for its necessary and reasonable emergency response costs and expenses related to services rendered under this Agreement.

Such reimbursable team response costs shall be limited to amounts collected by the Division pursuant to §323.70(4), Wis. Stats. and, under certain conditions, pursuant to the amounts appropriated under §20.465(3)(dr), Stats. Contractor shall be reimbursed by the Division in accordance with Subsections 4.5 and 4.6 herein.

4.4 **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-Grant" and will be available to Contractor based upon need. The Division makes no representations that funding will be available to all parties.

4.5 **Standard Equipment Purchases and Cache:** It is the intent of the Division 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-Grant" request with supporting documentation. The Division makes no representations that funding will be available to all parties.

It is the intent of the Division 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.

4.6 **Direct Collection of Team Response Costs by Contractor:** In addition to Division reimbursement addressed in Subsections 4.2 herein, Contractor may elect to collect team response costs directly from the Responsible Party(s) and/or seek reimbursement for local agency response pursuant to §323.71 of the Wisconsin Statutes.

4.7 **Where No Responsible Party Can Be Identified or the Responsible Party is Unable to Pay Team Response Costs:** As previously mentioned in Subsection 4.3 and upon the election of Contractor, the Division shall bill the party(s) responsible for causing the hazardous materials emergency for total emergency response costs. Where there is no identifiable Responsible Party, or if the Responsible Party is unable to pay, the Division agrees to reimburse Contractor's Team response costs from the emergency response supplement created under §20.465(3)(dr), Stats., only if the hazardous materials response team has made a good faith effort to identify the person responsible under §323.70(3), Stats., and that person cannot be identified, or, if that person is identified, the team has received reimbursement from that person to the extent that the person is financially able or has determined that the person does not have adequate money or other resources to reimburse the hazardous material response team. To seek Division reimbursement from the emergency response supplement created under §20.465(3)(dr), Stats., Contractor must comply with all Division-approved reimbursement procedures and/or duly enacted Administrative Rule(s) as well as the billing system requirements provided under Subsection 4.9 herein.

4.8 **Minimum Contract Subsidy:** This Agreement shall have a minimum contract Annual Allocation for State Fiscal Years 20157/168 through 20168/179 as described in "Exhibit B" to this Agreement. The Division certifies that sufficient funds are available and authorized within the Division's current appropriation or limitation. The minimum contract Annual Allocation does not, however, include Contractor's team response costs as specified in Subsection 4.3 of this Agreement.

No additional Contractor subsidy or reimbursement shall be paid or any additional demands placed on Contractor under this Agreement unless otherwise specifically agreed to by the Division and the Contractor, and upon written amendment to this Agreement. 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 team response costs except where partial payment has been made due to limitations of the Division funds under §323.70(3), the amounts appropriated under §20.465(3)(dr) and subject to further payment as set forth above.

4.9 Billing System for Division Reimbursement of Team Response Costs:

Contractor will provide an estimate of team response costs to the Division within ten (10) working days of the response. If the Contractor seeks Division reimbursement under §323.70(3), or from the emergency response supplement created under §20.465(3)(dr), Wis. Stats., Contractor shall file a Notice of Intent with the Division for response costs within thirty (30) days of the response. The Division will not bill responsible parties or reimburse Contractor from the emergency response supplement created under §20.465(3)(dr), Stats., unless it receives an invoice from the Contractor. Contractor's claim for reimbursement shall contain such documentation as is necessary to support the Division's cost-recovery operations and financial audits. The Division agrees to bill responsible parties for team response costs and may bill for the total emergency response costs. Team response costs include such items as vehicle and equipment use, expendables and personnel costs. In addition, team administrative costs may be billed as part of the emergency costs.

The Division shall bill identified Responsible Party(s) within thirty (30) days of receipt of Contractor's invoice. Contractor's team response costs shall be collected by the Division from the Responsible Party(s) before payment is made to the Contractor. Thereafter, if the Division successfully recovers payment from the Responsible Party(s) it shall first be used to pay the Contractor's team response costs, if these have not been paid in their entirety, then applied to the Division's administrative costs. Any remaining funds will be used to pay emergency response costs as billed. Contractor agrees to cooperate with the Division as is reasonable and necessary in order to allow the Division to bill third parties and pursue cost recovery actions.

If a disputed billing is resolved in favor of the responsible party(s), then the Contractor shall not be required to reimburse the Division for payments previously made.

Where there is no identifiable Responsible Party, or if the Responsible party is unable to pay, the Division agrees to reimburse the Contractor's team response

costs from the emergency response supplement created under §20.465(3)(dr), Stats., within thirty (30) days of receipt of Contractor's invoice and complete documentation. Contractor's claim for reimbursement from the emergency response supplement created under §20.465(3)(dr), Stats., shall contain such documentation as is necessary to support the Contractor's good faith effort to identify the Responsible party or to collect response costs from a Responsible Party(s) that is unable to pay. Further, Contractor shall comply with all Division-approved reimbursement procedures and/or duly enacted Administrative Rule(s).

- 4.10 **Approval:** Contractor, when acting under this Agreement, may not respond without following the Division-approved "Call Out Procedure". Granting of response approval by the Division of Emergency Management's Duty Officer constitutes the Division's agreement to pay Contractor's team response costs under §323.70(3), Wis. Stats. Contractor agrees to make reasonable and good faith efforts to minimize Responsible Party and/or Division expenses.
- 4.11 **Retirement System Status and Tax Payments:** Contractor and its employees are not entitled under this Agreement to Division contribution for any Public Employees Retirement Withholding System benefit(s). Contractor shall be responsible for payment/withholding of any applicable federal, Social Security and State taxes.
- 4.12 **Worker's Compensation:** A member of the Wisconsin Hazardous Materials Response System 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.
- 4.13 **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.
- 4.14 **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.

5.0 Liability and Indemnity

- 5.1 **Scope:** During operations authorized by this Agreement, Contractor and

members of the Wisconsin Hazardous Materials Response System shall be agents of the State and protected and defended against tort liability under §323.41, Wis. Stats. For purposes of §895.46(1), Stats., members of the Wisconsin Hazardous Materials Response System shall, during authorized operations be considered agents of the State and the State will indemnify Contractor as required under §895.46(1), Stats. 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, but does not include travel to and from the training.

5.2 **Civil liability exemption; hazardous material and local emergency response team:** Under §895.483 Wis. Stats., 1) a hazardous material emergency response team, a member of such a team, and a local agency, as defined in §323.70(1)(b), that contracts with the Division for the provision of a hazardous material response team, are immune from civil liability for acts or omissions related to carrying out responsibilities under a contract under §323.70(2); 2) a local emergency response team, a member of such a team, and the county, city, village or town that contracts to provide the emergency response team to the county, are immune from civil liability for acts or omissions related to carrying out responsibilities pursuant to a designation under §323.61(2m)(e); and, 3) a local emergency planning committee created under §59.07(146)(a)1, Stats., that receives a grant under §323.61 is immune from civil liability for acts and omissions related to carrying out its responsibilities under §323.61.

5.3 **Statutory Civil Immunity:** §895.4802 of the Wisconsin Statutes provides that a person is immune from civil liability for good faith acts or omissions related to assistance or advice which the person provides relating to an emergency or a potential emergency regarding either of the following:

(1) Mitigating or attempting to mitigate the effects of an actual or threatened discharge of a hazardous substance.

(2) Preventing or cleaning up or attempting to prevent or clean up an actual or threatened discharge of a hazardous substance.

(3) Any hazardous substance predictor or any person who provides the technology to enable hazardous substance predictions to be made is immune from civil liability for his or her good faith acts or omissions in making that prediction or providing that technology.

The good faith of any hazardous substance predictor or any person who provides the technology to make a prediction is presumed in any civil action. Any person

who asserts that the acts or omissions under subdivision three (3) above were not made in good faith has the burden of proving that assertion by clear and convincing evidence.

Under §895.4802(3)(c) of the Wisconsin Statutes, statutory civil immunity **does not** extend to acts or omissions which constitute gross negligence, or involves reckless, wanton or intentional misconduct. This is not intended to modify any right or duty under §895.4802, Stats.

Additional terms, definitions and exceptions to this statute are explained in §895.4802 of the Wisconsin Statutes.

Nothing contained herein is intended to limit any immunities and rights of any party available under Wis. Stats. §893.80, which are expressly reserves to the parties.

- 5.4 **Contractor Indemnification of State:** When acting as other than an agent of the Division under this Agreement, and when using the State's or Division's vehicles or equipment, the Contractor shall indemnify, defend and hold harmless the State, Division, its officers, Divisions, agents, employees, and members from all claims, suits or actions of any nature arising out of the activities or omissions of Contractor, subcontractors, its officers, agents, or employees.

6.0 Insurance Provisions

- 6.1 **Public Liability and Property Damage 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". The Certificate is required to be presented prior to commencement of this Agreement.

- 6.2 **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 6.1. 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". The Certificate is required to be presented prior to commencement of this Agreement.

- 6.3 **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.
- 6.4 **Certificate(s) of Insurance:** As evidence of the insurance coverage required by this Agreement, Contractor shall provide an insurance certificate indicating this coverage, countersigned by an insurer licensed to do business in Wisconsin, covering the period of the Agreement. The insurance certificate is required to be presented prior to commencement of this Agreement.

7.0 Standard Contract Terms, Conditions and Requirements

- 7.1 **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 team and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interest of the State.

Contractor agrees as part of this contract for services that during performance of this contract, they 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 contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the State.

- 7.2 **Dual Employment:** §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 \$5,000 as compensation. This prohibition applies only to individuals and does not include corporations or partnerships.
- 7.3 **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.

- 7.4 **Conflict of interest:** Private and non-profit corporations are bound by §180.0831 and §181.225 Wis. Stats., regarding conflicts of interest by directors in the conduct of state contracts.
- 7.5 **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 three (3) years after the final payment is made or longer where required by law.
- 7.6 **Team Personnel Removal:** In the event that an individual hazardous materials system member is substantiated to have been negligent or unresponsive to the contractual requirements, the Division, after consultation with Contractor and Contractor's Fire Commission/Board, may recommend the removal of this member from the hazardous material response system. A request by the Division to dismiss an employee shall not constitute an order to discipline or discharge the employee. All actions taken by the system and/or fire department management in regard to employee discipline shall be at the sole discretion of the system and/or fire department management.
- 7.7 **Hold Harmless:** The Division of Emergency Management, the Department of Military Affairs, and the State of Wisconsin shall be held harmless in any disputes the system and/or fire department may have with their employees. This shall include, but not be limited to, charges of discrimination, harassment, and discharge without just cause.
- 7.8 **Termination of Agreement:** The Division and/or Contractor may terminate this Agreement at any time **for cause** by delivering thirty (30) days written notice to the other Party. Upon termination, the Division's liability will be limited to the pro rata cost of the services performed as of the date of termination plus expenses incurred with the prior written approval of the Division. Upon termination, Contractor will refund to the Division within sixty (60) days of said termination all payments made hereunder by the Division to the Contractor for work not completed or not accepted by the Division.

Contractor may terminate this Agreement **at will** by delivering ninety (90) days written notice to the Division. In the event the Contractor terminates this Agreement for any reason whatsoever, it will refund to the Division within sixty (60)

days of said termination all payments made hereunder by the Division for its Annual Allocation, under Subsection 4.1, provided to the Contractor for the contract year in which the termination occurs based in proportion to the number of days remaining in the contract year.

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

(1) If Division funding from federal, state, or other sources is not obtained and/or continued at levels sufficient to allow for purchases of the indicated quantity of services, the Agreement may be modified to accommodate a reduction or increase in funds.

(2) If 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) If 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.

Any termination of the Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

7.9 **Cancellation:** The State of Wisconsin reserves that 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 the terms, conditions, and specifications of this Agreement.

7.10 **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 contract performance 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.

Contractor shall file with the Department of Military Affairs quarterly reports of purchases of such supplies and services necessary for the implementation of this Agreement.

7.11 **Executed Contract to Constitute Entire Agreement:** The contents of the Agreement and its Exhibits, as well as additional terms agreed to, in writing, by the

Division and the Contractor shall become a part of the Agreement herein. The written Agreement with referenced Exhibits and attachments shall constitute the entire Agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to, in writing, by the contracting authority.

- 7.12 **News Releases:** News releases pertaining to the negotiation of this Agreement shall not be made without the prior approval of the Division.
- 7.13 **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, local laws, ordinances and regulations which are in effect during the period of this Agreement and which may in any manner affect the work or its conduct.
- 7.14 **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.
- 7.15 **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.
- 7.16 **Force Majeure:** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riots, acts of God and/or war which is beyond that party's reasonable control.
- 7.17 **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: Office of General Counsel, WING-LGL
WI Dept. of Military Affairs

PO Box 8111
Madison, WI 53708-8111

- 7.18 **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.
- 7.19 **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.
- 7.20 **Approval Authority:** Contractor's representative(s) certify by their signature herein that he or she, as the case may be, has the necessary and lawful authority to enter into contracts and agreements on behalf of the local government entity.
- 7.21 **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.
- 7.22 **No Waiver:** No failure to exercise, and no delay in exercising, any right, power or remedy, including payment, hereunder, on the part of the Division, State, or Contractor, shall operate as a waiver hereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall effect 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, therein. 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.
- 7.23 **Construction of Agreement:** This Agreement is intended to be solely between the parties hereto. 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.
- 7.24 **Disparity:** In the event of a discrepancy, difference or disparity in the terms, conditions or language contained in the Agreement and its Exhibits, it is agreed between the parties that the language in this extended Agreement shall prevail.

Approving Signatures:

ON BEHALF OF THE DIVISION OF EMERGENCY MANAGEMENT (DIVISION)

Dated this ____ day of June, 2017⁵

Brian M. Satula, Division Administrator