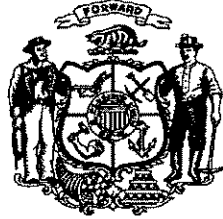


# THE STATE OF WISCONSIN

C

SENATE CHAIR  
BRIAN BURKE

316-S Capitol  
P.O. Box 7882  
Madison, WI 53707-7882  
Phone: (608) 266-8535



ASSEMBLY CHAIR  
JOHN GARD

315-N Capitol  
P.O. Box 8952  
Madison, WI 53708-8952  
Phone: (608) 266-2343

## JOINT COMMITTEE ON FINANCE

June 27, 2000

The Honorable Tommy G. Thompson  
Governor  
Room 125 South, State Capitol  
Madison, WI 53702

Dear Governor Thompson:

We are writing to inform you that the members of the Joint Committee on Finance have reviewed your request, received June 8, 2000, pursuant to s. 16.54(2)(a)2, Stats., concerning the expenditure of FFY 1999 Local Law Enforcement Block Grant funds being made available to the state by the federal government.

No objections to this request have been raised. Accordingly, the request is approved.

Sincerely,

Handwritten signature of Brian Burke in black ink.

BRIAN BURKE  
Senate Chair

Handwritten signature of John G. Gard in black ink.

JOHN G. GARD  
Assembly Chair

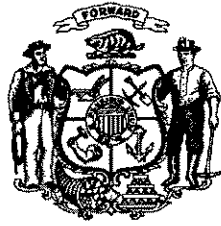
BB:JG:dh

cc: Members, Joint Committee on Finance  
Executive Director Jerry Baumbach, Office of Justice Assistance  
Robert Lang, Legislative Fiscal Bureau  
Vicky LaBelle, Department of Administration

# THE STATE OF WISCONSIN

SENATE CHAIR  
**BRIAN BURKE**

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ASSEMBLY CHAIR  
**JOHN GARD**

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Phone: (608) 266-2343

## JOINT COMMITTEE ON FINANCE

### MEMORANDUM

To: Members  
Joint Committee on Finance

From: Senator Brian Burke  
Representative John Gard  
Co-Chairs, Joint Committee on Finance

Date: June 9, 2000

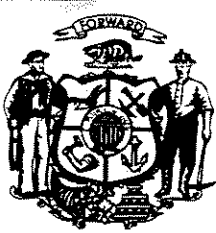
Re: Attached Request for Expenditure of Block Grant Funds

Attached is a copy of a request from the Governor requesting approval for the expenditure of block grant funds being made available to the state by the federal government. Pursuant to s. 16.54(2)(a)2, Stats., the Governor may not encumber or expend federal block grant funds authorized under any federal law enacted after August 31, 1995, without notifying the Joint Committee on Finance of the grant and the proposed expenditures. If the Co-Chairs of the Committee do not notify the Governor within 14 working days after receiving the request that a meeting has been scheduled to review the proposal, the moneys may be expended.

The attached request concerns the proposed distribution of Local Law Enforcement Block Grant funds. Please review this item and notify **Senator Burke** or **Representative Gard** no later than **Monday, June 26, 2000**, if you have any concerns about the request or would like the Committee to meet formally to consider it.

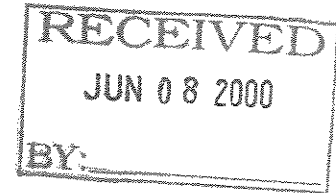
Also, please contact us if you need further information.

BB:JG:js



TOMMY G. THOMPSON

Governor  
State of Wisconsin



The Honorable Brian Burke, Co-Chair  
Joint Committee on Finance  
State Capitol, Room 316 South  
Madison, Wisconsin 53707

The Honorable John Gard, Co-Chair  
Joint Committee on Finance  
State Capitol, 315 North  
Madison, Wisconsin 53707

SUBJECT: Notification of Federal Block Grant

Dear Senator Burke and Representative Gard:

Attached is a request for expenditure of block grant funds being made available to the state by the federal government. Pursuant to s. 16.54(2)(a)2., the grant funds will be made available for encumbering through the allotment process within 14 working days after the date of this notification letter, unless you notify me that a meeting has been scheduled for the Joint Committee on Finance to review the proposed expenditure of grant monies.

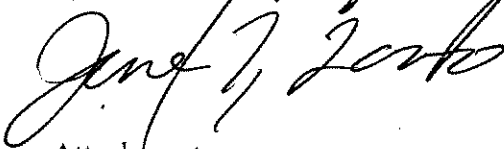
Please also contact State Budget Director Richard G. Chandler (266-1035) in the Department of Administration if you have any additional questions or if you schedule a meeting to review the proposed expenditure.

Thank you for your prompt attention to this notification letter.

Sincerely,

TOMMY G. THOMPSON  
Governor

Date: 

  
Attachments



Date

*June 7, 2000*

The Honorable Brian Burke, Co-Chair  
316 So Capitol  
The Honorable John Gard, Co-Chair  
315 No Capitol  
Joint Committee on Finance  
Madison, WI 53702

**Re: FFY 1999 Local Law Enforcement Block Grant**

Dear Senator Burke and Representative Gard:

This letter is being submitted pursuant to section 16.54(2)(a), Wis. Stats. and replaces a letter previously submitted. The Federal Budget for fiscal year 1999 provided a maximum of \$3,518,330 in Local Law Enforcement Block Grant (LLEBG) funds to the State of Wisconsin. Of that total, up to \$2,839,135 is being provided directly to large local law enforcement agencies in separate awards by the federal Bureau of Justice Assistance (BJA). Per federal statute, local agency award amounts are determined by a formula based on the number of Part I Violent Index Crimes as reported through the Uniform Crime Reporting system. BJA makes direct awards to those agencies which generate an award of \$10,000 or more.

State governments receive the remainder of each state's total allocation. This is the amount generated by smaller agencies which would have received less than \$10,000 by the formula method. The State of Wisconsin is eligible for an FFY 1999 award of \$611,275, for which award authority should be received shortly by the Office of Justice Assistance.

~~This~~ fund may be subawarded in any amounts to agencies not receiving a direct federal award. Funds must be used for activities or costs within seven broad purpose areas which include new staff, overtime costs, equipment purchases, new court and adjudication projects, multi-jurisdictional task forces, and crime prevention programs. Funds may not be used to supplant existing fund sources and a ten percent cash match is required.

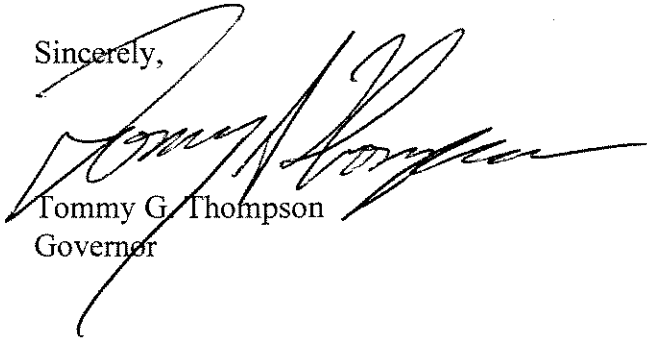
I propose to use these limited funds to assist rural communities in the state in developing and implementing a variety of innovative community policing programs and resources. Special emphasis would be placed on enhancing coordination within communities, and in promoting problem-oriented community outreach. Site selection would be based on the willingness of counties and communities to work together, and on the potential for developing and demonstrating new community policing methods which would be effective in counties and smaller cities. This program would also be coordinated with the Police Corps program being developed by the Office

of Justice Assistance, which will develop new community policing training methods and ultimately place new officers into community policing roles.

As proposed, this program would not require any administrative funds for the Office of Justice Assistance, and all funds would be expended for the benefit of local law enforcement agencies. The recipient agencies would be required to provide a ten percent cash match. Funds would be expended through Chapter 20.505(6)(p), Wis. Stats., Federal Aid, Criminal Justice Improvement Projects, Local Assistance. This allocation is included in OJA's budget authority in its Chapter 20 appropriation for local assistance awards.

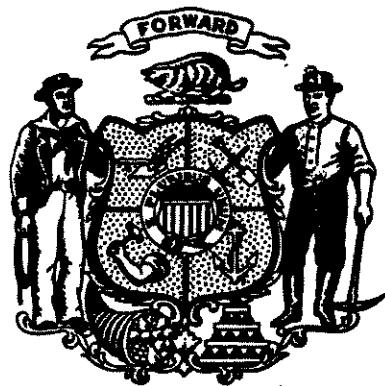
I am very excited about the further development of coordinated community policing approaches, and encourage your endorsement.

Sincerely,

A handwritten signature in black ink, appearing to read "Tommy G. Thompson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tommy G. Thompson  
Governor

*END*



*END*

# STATE OF WISCONSIN

SENATE CHAIR  
BRIAN BURKE

316 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882  
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JOHN GARD

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## JOINT COMMITTEE ON FINANCE

June 27, 2000

Major General James G. Blaney  
The Adjutant General  
Department of Military Affairs  
2400 Wright Street  
Madison, WI 53704

Dear General Blaney:

On June 7, 2000, we received from you a request for approval by the Committee, pursuant to s. 166.215(5), of new contracts between the Division of Emergency Management (for the state) and eight regional emergency response teams (Level A teams). The contracts would, with the exception of the contract with the City of Milwaukee, cover fiscal years 2000-01 and 2001-02.


The Committee has reviewed the proposed contracts. In the process of this review, the following questions have arisen:

1. It is noted that the contract with the City of Milwaukee covers only fiscal year 2000-01.
  - What is the Department's intent with regard to contract coverage for this area of the state for fiscal year 2001-02? If a different amount of funding is approved for this contract for fiscal year 2001-02, will contracts with other Level A teams also be affected?
2. It is also noted also that the issue has previously been raised that, from a biennial budget perspective, it would be preferable to have all contracts expire at the end of a state fiscal biennium so that total contract funding amounts and appropriated amounts available cover the same two-year time period.

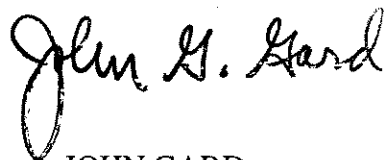
- What is the Department's intent regarding the time period that will be covered by future contracts? Will the Department take steps to achieve such a corresponding fiscal biennial time period for each of the next set of contracts?
3. Finally, it is noted that in a previous approval letter, the Committee requested that future submissions of contracts to the Committee for approval under s. 166.215(5) be provided to the Committee at least 45 days prior to the expiration of the existing contracts. The pending contracts were not submitted to the Committee until 14 days before the expiration date of the current contracts.

Because of the short timeline between the submittal of these new contracts and the expiration date (June 30, 2000) of the existing contracts, the Committee will approve the contracts as submitted subject to the understanding that the Department will provide the Committee, no later than July 12, 2000, with a written response to the questions and comments outlined above. We would again ask that future contracts be submitted to us 45 days prior to the expiration of future contracts.

Sincerely,



BRIAN BURKE  
Senate Chair



JOHN GARD  
Assembly Chair

BB:JG:js

cc: Members, Joint Committee on Finance  
Secretary Lightbourn, DOA  
Bob Lang, Legislative Fiscal Bureau



# THE STATE OF WISCONSIN

SENATE CHAIR  
**BRIAN BURKE**

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## JOINT COMMITTEE ON FINANCE

### MEMORANDUM

To: Members  
Joint Committee on Finance

From: Senator Brian Burke  
Representative John Gard

Re: 14-Day Passive Review Approval

Date: June 8, 2000

Attached is a copy of a request from the Department of Military Affairs, received June 7, 2000, which extends contractual agreements for hazardous materials regional response team services with the Cities of Eau Claire/Chippewa Falls, Madison, Racine, Superior and Wausau for fiscal years 2000/01 and 2001/02. The request also extends the City of Milwaukee contract for fiscal year 2000/01, and notifies the committee of new contractual agreements with the City of LaCrosse and the newly reorganized team comprised of the Cities of Appleton and Oshkosh for fiscal years 2000/01 and 2001/02.

The notice is pursuant to s. 166.215(5), Stats., which requires 14-day passive review and approval by the Joint Committee on Finance.

Please review the material and notify **Senator Burke** or **Representative Gard** no later than **Monday, June 26, 2000**, if you have any concerns about the request or if you would like the Committee to meet formally to discuss it.

Also, please contact us if you need further information.

Attachment

BB:JG:dh



STATE OF WISCONSIN

Department of Military Affairs  
Division of Emergency Management

To: Honorable Senator Brian B. Burke  
Honorable Representative John Gard  
Co-Chairs  
Joint Committee on Finance

From: Major General James G. Blaney  
The Adjutant General  
Department of Military Affairs

A handwritten signature in black ink, appearing to read 'James G. Blaney', written over the printed name in the 'From' field.

RE: Notification pursuant to §166.215(5), Stats.  
HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM CONTRACTS -  
NEW CONTRACTUAL AGREEMENTS AND EXTENSION OF CONTRACTUAL  
AGREEMENTS

**Notification:**

The Department of Military Affairs, Division of Emergency Management hereby notifies the Committee of its intent to enter into new contractual agreements, for fiscal years 2000/01 and 2001/02, for hazardous materials regional response team services with the City of La Crosse and the newly reorganized team comprised of the Cities of Appleton and Oshkosh.

Further, the Department of Military Affairs, Division of Emergency Management notifies the Committee of its intent to extend, for fiscal years 2000/01 and 2001/02, the existing contractual agreements for hazardous materials regional response team services with the Cities of Eau Claire/Chippewa Falls, Madison, Racine, Superior and Wausau. At this time, the City of Milwaukee desires to enter into a one-year contractual extension, for fiscal year 2000/01.

**The Department of Military Affairs, Division of Emergency Management is pleased to inform the Committee that the sum appropriated under §20.465(3)(dd), Stats., will be sufficient to fund all teams for fiscal years 2000/01 and 2001/02 as proposed herein. The contracts, with all relevant exhibits, are attached hereto for your reference.**

**Background:**

1991 Wisconsin Act 104 created the requirement for the establishment of hazardous materials regional response teams to assist in emergency response to level A releases throughout the State of Wisconsin. The State Emergency Response Board (SERB) was mandated by statute to contract with fire departments strategically located throughout the

state to provide this coverage. The SERB established contracts with eight regional response teams (Superior, Appleton/Brown County, Madison, Milwaukee, Racine, Wausau, Eau Claire/Chippewa Falls and Oshkosh/Manitowoc/Sheboygan). Effective July 1, 1998, all duties of the SERB, including contractual obligations, were statutorily transferred to the Wisconsin Division of Emergency Management (Division).

The initial contracts with the eight regional response teams had staggered terms due to the varying dates when each contract was signed. In July 1998, the Committee extended the two contracts for the regional response teams located in Superior and Wausau until June 30, 1999. In July 1999, the Committee extended the contracts for the teams of Appleton/Brown County, Milwaukee, Oshkosh/Manitowoc/Sheboygan, Superior and Wausau until June 30, 2000 so that all eight regional response team contracts would expire at the same time.

During the past year, the Division has reviewed the response history throughout the state, response team budgets and primary response areas to provide for further efficiencies and economies of scale. As a result, the Division entered into negotiations with the City of La Crosse to obtain localized regional response team coverage on the Mississippi River. The Division also determined that it was appropriate to consolidate the teams comprised of Appleton/Brown County and Oshkosh/Manitowoc/Sheboygan into one team.

1997 Wisconsin Act 27, as codified in §166.215(5) Stats., mandates that the Division shall notify the Joint Committee on Finance, in writing, prior to entering into a new contractual agreement or extending a contractual agreement. Accordingly, the Division is requesting the approval of two new contractual agreements and six contractual extensions. The Division intends to continue its review of the regional response team program for further efficiencies and economies of scale.

#### **New Contractual Agreements:**

1999 Wisconsin Act 9, as codified in §166.215(1) Stats., requires that, beginning July 1, 2001, one of the regional response teams shall be located in La Crosse County. Based upon importance of local response coverage on the Mississippi, the Division decided to enter into a new contractual agreement with the City of La Crosse one year before mandated by the law. It has been a long-standing position of the former SERB and the Division to have a regional response team proximately located on the Mississippi River.

The consolidation of the former teams comprised of Appleton/Brown County and Oshkosh/Manitowoc/Sheboygan into one team necessitates a new contract with the Cities of Appleton and Oshkosh. The City of Appleton Fire Department will serve as the lead agency for the combined regional response team of Appleton and Oshkosh. Manitowoc County and Brown County will be subcontracted as chemical assessment teams.

#### **Extended Contractual Agreements:**

The Division proposes to extend the remaining six regional response team contracts with the Cities of Eau Claire/Chippewa Falls, Madison, Milwaukee, Racine, Superior and

Wausau. With the exception of Milwaukee, the Division requests to extend these contracts for fiscal years 2000/01 and 2001/02. Due to reductions in its negotiated budget, the City of Milwaukee has opted to enter into a one-year contract for fiscal year 2000/01. It is anticipated that the Division will successfully negotiate a contract extension with the City of Milwaukee for fiscal year 2001/02.

**Budget Models Used for Contract Negotiation:**

For the first time since the inception of the regional response team program, the Division made a logical effort to develop a budget model to validate each response team's budget from the ground up. The Division focused on the core number of members comprising each response team to determine realistic costs for personnel, training, administration costs, annual medical exams and incentive pay. The Division identified a reasonable cost per member and multiplied that sum by the number of core team members on each response team. To support and encourage outreach, the number of fire departments in each team's primary response area was multiplied that by a standard outreach cost per fire department. In order to treat all teams consistently and fairly, the Division set the amount for expendables at \$15,000 per year. With the exception of La Crosse, all other response teams were budgeted \$10,000 per year for equipment purchases.

After arriving at a base figure for each response team, certain adjustments were made (both positive and negative) to account for the unique circumstances of each team. The reasons for the adjustments included: the recognition of a liability insurance premium for the City of Milwaukee; the acknowledgement of significant outreach program costs; the identification of increased incentive pay costs due to labor contracts; and, the fact that two teams requested less money than the base amount.

**Negotiated funding levels:**

Based upon the above-referenced budget model, contract negotiations with all the regional response teams were concluded in spring 2000, as follows:

**Negotiated Annual Payments**

<u>Team</u>	<u>2000/01</u>	<u>2001/02</u>
Appleton/Oshkosh	169,700	169,700
Eau Claire/Chippewa Falls	164,800	164,800
La Crosse	202,600	202,600
Madison	194,400	194,400
Milwaukee	270,350	***
Racine	119,500	119,500
Superior	149,448	149,448
Wausau	129,202	129,202
<b>Total:</b>	<b>\$1,400,000</b>	<b>\$1,129,650</b>

\*\*\* = City of Milwaukee contract extension is for fiscal year 2000/01 only.

**Relationship to Statutory Criteria:**

This notification fulfills the requirement of 1997 Wisconsin Act 27, as codified in §166.215(5) Stats., which mandates that the Division shall notify the Joint Committee in Finance, in writing, prior to entering into a new contractual agreement or extending a contractual agreement.

**Prepared by:**

Randi Wind Milsap  
Legal Counsel  
Dept. of Military Affairs  
(608) 242-3072

June 6, 2000



**CONTRACT FOR  
REGIONAL HAZARDOUS MATERIALS  
RESPONSE TEAM SERVICES**

**JULY 1, 2000 THROUGH JUNE 30, 2002**

Between

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

And

**CITY OF APPLETON, WISCONSIN  
CITY OF OSHKOSH, WISCONSIN  
ALSO COLLECTIVELY REFERRED TO AS THE  
NORTHEAST WISCONSIN HAZMAT TEAM**

DATE: June 30, 2000

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**CONTRACT FOR REGIONAL HAZARDOUS MATERIALS  
RESPONSE TEAM 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 Appleton, Wisconsin and the City of Oshkosh, Wisconsin also collectively referred to as the Northeast Wisconsin Hazmat Team (hereinafter "Contractor") for the provision of regional hazardous materials response team services as described herein and authorized under 1991 Wisconsin Act 104, as codified in §166.215 of the Wisconsin Statutes.

1.2 **Recitals:** WHEREAS, in order to protect life and property against the dangers of emergencies involving hazardous materials, the Division may assign and make available for use in any county, city or district, a regional hazardous materials response team.

WHEREAS, the Division desires to enter into this Agreement to establish Contractor as a Regional Hazardous Materials Response Team, 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 166.20(4), Wis. Stats.

1.3 **Contract Term:** This Agreement shall continue from the date indicated on the notice of intent to award and shall continue for an additional two years commencing July 1, 2000 through June 30, 2002.

**2.0 Definitions**

2.1 **Definitions:** The following definitions are used throughout this Agreement:

Agreement means this extended Contract, together with the Notice of Intent to Award, Exhibits and Addenda. Exhibits and Addenda include the following:

- |           |   |
|-----------|---|
| Exhibit A | Request for Proposal and Addenda                                    |
| Exhibit B | City of Appleton and Northeast Wisconsin Hazmat Task Force Proposal |
| Exhibit C | Notice of Intent to Award   |
| Exhibit D | Primary Response Area   |
| Exhibit E | Two-year Budget   |

State means the State of Wisconsin.

Department means the State of Wisconsin, Department of Military Affairs.

Division means the Division of Emergency Management.

Regional Team means one of the eight (8) fire departments chosen by the Division to provide regional Level A hazardous materials response that meets the standards under 29 CFR 1910.120(q)(6)(iv), as further amended. Under §166.215(1), Stats., the Division may only contract with public organizations.

Contractor means the City of Milwaukee Fire Department, City of Milwaukee, Wisconsin by which service or services will be performed under this Agreement.

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

Level A Release means a release that meets the specifications under §166.20(1)(ge) of the Wisconsin Statutes.

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.

Local Government Agency means a city, county, district or subdivision thereof.

Primary Response Area means the geographical region where the Contractor is principally responsible for providing regional hazardous response team services.

Regional Hazardous Materials Response Team means the Contractor and/or designated employees of the Contractor who are expected to respond to, control, and/or stabilize the actual or potential emergency release(s) of hazardous substances.

Responsible Party means the person(s), as defined in 42 U.S.C. §9606 and §9607, who possessed or controlled a hazardous substance which was discharged or who caused the discharge of a hazardous substance which caused the emergency to which Contractor has responded.

### **3.0 Statement of Work**

- 3.1 **Services to be provided by Contractor:** During the term of this Agreement, the Contractor agrees to provide regional hazardous response team services within the boundaries of Contractor's assigned Primary Response Area as described in Exhibit D, attached hereto and incorporated by reference herein.

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. 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 Contractor and as is reasonably necessary to operate within the safety levels of a regional hazardous materials response team.
- 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 Level A equipment and vehicles 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 Level A release.
- 3.5 **Vehicle and Equipment Use Limitations:** This Agreement in no way limits the Contractor from responding with Level A 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 within the Primary Response Area, 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 Standard Operating Guidelines provided in Subsection 3.8 herein.

- 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 level A response within Contractor's Primary Response Area, then if notice has been provided to the

Division, the Contractor may decline a request for regional emergency hazardous material response.

- 3.8 **Standard Operating Guidelines:** Contractor and Division agree that regional response team operations will be conducted in accordance with Standard Operating Guidelines and "Call Out Procedure" that will be mutually approved by the parties to this Agreement.

#### 4.0 Contractor Subsidy and Reimbursement

There are two types of Contractor costs under this Agreement: (1) Standby Costs, and (2) Team Response Costs. Each of these are discussed more fully below.

- 4.1 **Standby Costs:** As provided under §166.215(1) of the Wisconsin Statutes, Contractor will be subsidized annually, commencing fiscal year 2000/01, under this Agreement for its approved standby costs as described in "Exhibit E", attached hereto and incorporated by reference herein. Said payments to regional emergency response teams for standby costs shall be made from the appropriation account under §20.465(3)(dd) of the Wisconsin Statutes. Such standby costs include, but are not limited to:

(1) Specialized Training Expenses: The Division shall, subject to available funding, provide advanced training and education to Contractor's employees. Requests for such training must be approved by the Division in advance.

All such other training must comply with the governmental regulations associated with assigned duties under this Agreement. Such costs may include training, personnel costs, and per diem/travel expenses in accordance with the State rates. Where the Contractor demonstrates that its employees already meet or exceed Division-approved standards, then the allocated training funds shall be authorized for transfer within the Contractor's account.

(2) Medical Surveillance: Contractor shall provide Baseline, Maintenance and Exit Physicals for each regional hazardous material response team member.

(3) Response Vehicle(s) and Equipment Purchases: Standby costs provide for necessary equipment and supply purchases of Level A vehicle(s), supplies and equipment by Contractor. Where Contractor has obtained the required equipment contained on the Division-approved minimum required equipment list, allocated funds may be authorized for transfer within the Contractor's account. Title to any equipment purchased or fabricated pursuant to this Agreement shall be vested in Contractor. Such title shall be vested in the Contractor upon acquisition of the equipment or as soon as feasible thereafter.

The Division and Contractor acknowledge and agree that a primary project goal of the regional hazardous materials response team is to standardize Level A vehicles and equipment on a statewide basis.

- 4.2 **Standby Cost Expenditures:** It is the intent of the Division that funds allocated under Subsection 4.1 of this Agreement shall supplement existing, budgeted moneys 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 moneys 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 government 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 §166.215(2) 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 the rates provided in "Exhibit B" to this Agreement.

(2) Personnel Expenses: Contractor's team response personnel expenses which are approved and authorized under this Agreement are reimbursable at the rates described in "Exhibit B". 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 §166.215(2) 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 §166.215(3), 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 4.4 and 4.6 herein.

- 4.4 **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 §166.22 of the Wisconsin Statutes.

4.5 **Where No Responsible Party Can Be Identified or the Responsible Party is Unable to Pay Team Response Costs:** As previously mentioned in Subsection 4.2 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 regional emergency response team has made a good faith effort to identify the person responsible under §166.215(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 regional emergency 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 4.6 herein.

4.6 **Maximum Contract Subsidy:** This Agreement shall have a maximum contract subsidy of \$136,700.00 per annum for the core team and \$33,000.00 per annum for the two chemical assessment teams for stand-by costs as described in "Exhibit E" to this Agreement. The Division certifies that sufficient funds are available and authorized within the Division's current appropriation or limitation. The maximum contract subsidy does not, however, include Contractor's team response costs as specified in Subsection 4.2 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 §166.215(2), the amounts appropriated under §20.465(3)(dr) and subject to further payment as set forth above.

4.7 **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 §166.215(2), 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).

- 4.8 **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 §166.215(2), Wis. Stats. Contractor agrees to make reasonable and good faith efforts to minimize Responsible Party and/or Division expenses.
- 4.9 **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.



- 4.10 **Worker's Compensation:** A member of a regional hazardous materials response team who is acting under the scope of this Agreement is an employee of the State for purposes of Worker's Compensation under §166.215(4) of the Wisconsin Statutes.
- 4.11 **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.
- 4.12 **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.

## 5.0 Liability and Indemnity

- 5.1 **Scope:** During operations authorized by this Agreement, Contractor and members of regional hazardous materials response teams shall be agents of the State and protected and defended against tort liability under §166.03(8)(e), Wis. Stats. For purposes of §895.46(1), Stats., members of the hazardous materials response team 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 regional hazardous materials emergency response team. Operations also includes advanced training activities provided under this contract to the members of a hazardous materials response team, but does not include travel to and from the training.
- 5.2 **Civil liability exemption; regional and county emergency response team:** Under §895.483 Wis. Stats., 1) a regional emergency response team, a member of such a team, and a local agency, as defined in §166.22(1)(c), that contracts with the Division for the provision of a regional response team, are immune from civil liability for acts or omissions related to carrying out responsibilities under a contract under §166.215(1); 2) a county 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 §166.21(2m)(e); and, 3) a local emergency planning committee created under §59.07(146)(a)1, Stats., that receives a grant under §166.21 is immune from civil liability for acts and omissions related to carrying out its responsibilities under §166.21.
- 5.3 **Statutory Civil Immunity:** §895.48(2) 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 §895.48(2)(c)(3) 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 §895.48, Stats.

Additional terms, definitions and exceptions to this statute are explained in §895.48 of the Wisconsin Statutes.

- 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, its officers, subcontractors, 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, public liability and property damage insurance against any claim(s) which might occur in carrying out this Agreement. Minimum coverage is five hundred thousand dollars (\$500,000) liability for bodily injury and property damage including products liability and completed operations.

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 G". 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 its respective vehicle(s) during the term of this Agreement. This coverage may be written in combination with the public liability and property damage insurance mentioned in Subsection 6.1. Auto liability coverage limits shall not be less than two hundred fifty thousand dollars (\$250,000) bodily injury each person, five hundred thousand dollars (\$500,000) per occurrence and two hundred fifty thousand dollars (\$250,000) property damage each occurrence or five hundred thousand dollars (\$500,000) combined single limit.

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 G". 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 the regional team, 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 team 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 regional hazardous material response team. 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 team and/or fire department management in regard to employee discipline shall be at the sole discretion of the team 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 team 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 standby costs, 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 RFP (including all attachments), RFP addenda and revisions, the Proposal of the Contractor, the Notice of Award, and 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 parts 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  
DMA Wisconsin  
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 Legal Counsel, WING-LGL  
WI Dept. of Military Affairs  
PO Box 14587  
Madison, WI 53714-0587

- 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 RFP (including all attachments), RFP addenda and revisions, and the Agreement, 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, 2000**

**\_\_\_\_\_  
Edward J. Gleason, Division Administrator**



**CITY OF APPLETON, WISCONSIN  
A Wisconsin Municipal Corporation**

**Agreement: REGIONAL HAZARDOUS MATERIALS RESPONSE TEAM SERVICES**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Timothy M. Hanna, Mayor**

**Attest:** \_\_\_\_\_  
**Cindi Hesse, City Clerk**

*Approved as to form:*

\_\_\_\_\_  
**James P. Walsh, City Attorney**

*Countersigned pursuant to §62.09(10), Wis. Stats.:*

\_\_\_\_\_  
**Lisa A. Maertz, Director of Finance**

*On behalf of the Appleton Fire Department*

\_\_\_\_\_  
**Neil Cameron, Fire Chief**

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

**Dated this \_\_\_\_ day of June, 2000**

**Signature: \_\_\_\_\_**

**Printed Name: Richard A. Wollangk  
Title: City Manager  
Address: 215 Church Street  
City/State: Oshkosh, WI                      Zip: 54902-1130**

**On Behalf of the City of Oshkosh**

**Dated this \_\_\_\_ day of June, 2000**

**Signature: \_\_\_\_\_**

**Printed Name: Pam Ubrig  
Title: City Clerk  
Address: 215 Church Street  
City/State: Oshkosh, WI                      Zip: 54902-1130**

**On Behalf of the City of Oshkosh**

**Dated this \_\_\_\_ day of June, 2000**

**Signature: \_\_\_\_\_**

**Printed Name: Edward Nokes  
Title: Finance Director  
Address: 215 Church Street  
City/State: Oshkosh, WI                      Zip: 54902-1130**

Approved as to form:

Dated this \_\_\_\_ day of June, 2000

Signature: \_\_\_\_\_

Printed Name: Lynn A. Lorensen

Title: Assistant City Attorney

Address: 215 Church Street

City/State: Oshkosh, WI      Zip: 54902-1130



State of Wisconsin

STATE EMERGENCY RESPONSE BOARD

4802 SHEBOYGAN AVENUE ROOM 89A  
 P.O. BOX 7865  
 MADISON WISCONSIN 53707-7865  
 TELEPHONE (608) 766-3232

December 17, 1992

Chief Richard D. Davis  
 Appleton Fire Department  
 700 N. Drew Street  
 Appleton, WI 54911-2927

Dear Chief Davis:

The State Emergency Response Board has selected the following communities' proposals to negotiate a final contract to provide Regional Hazardous Materials Response Teams:

1. Racine
2. Milwaukee
3. Appleton
4. Madison
5. Superior
6. Wausau
7. Chippewa Falls/Eau Claire

It is the intent of the State Emergency Response Board to negotiate the final contract to meet the statewide needs for Regional Hazardous Materials Response Teams. This letter is thus only to be considered notice of intent to contract and does not constitute a contractual commitment.

The State Emergency Response Board through the Administrator of the Division of Emergency Government, the purchasing agent for the Department of Military Affairs and such other personnel as are deemed necessary, shall serve as a negotiating team to negotiate the terms of a final contract. The terms of this contract will include such things as description of the geographic area, the make-up of the response team and its equipment and minimum financial needs of the team, as well as other concerns as are statutorily required.

The State Emergency Response Board wishes to thank those communities who submitted proposals which were not selected.

Sincerely,  
 FOR THE STATE EMERGENCY RESPONSE BOARD:

Diane E. Sachse  
 Purchasing Agent  
 Wisconsin Department of Military Affairs



EXHIBIT C

State of Wisconsin

STATE EMERGENCY RESPONSE BOARD

4802 SHEBOYGAN AVENUE ROOM 99A  
P.O. BOX 7865  
MADISON WISCONSIN 53707-7865  
TELEPHONE (608) 266-3232

September 16, 1993

Chief Stan Tadych  
Oshkosh Fire Department  
101 Court Street  
Oshkosh, WI 54901

Dear Chief Tadych:

At the August 12, 1993 State Emergency Response Board meeting, the Board approved the selection of two (2) additional Regional Hazardous Materials Response Teams. The Northeast Wisconsin Hazmat Task Force was designated as an additional Regional Hazardous Materials Response Team to enter into contract negotiations.

It is the intent of the State Emergency Response Board to negotiate the final contract to meet the statewide needs for Regional Hazardous Materials Response Teams. This letter is thus only to be considered a notice of intent to contract and does not constitute a contractual commitment.

The State Emergency Response Board through the Administrator of the Emergency Government, the purchasing agent for the Department of Military Affairs and such other personnel as are deemed necessary, shall serve as a negotiating team to negotiate the terms of a final contract. The terms of this contract will include such items as the description of the geographic area, the makeup of the response team and its equipment and minimum financial needs of the team, as well as other concerns as are statutorily required.

Sincerely,  
FOR THE STATE EMERGENCY RESPONSE BOARD:

Leroy E. Conner, Jr.  
Chair  
State Emergency Response Board

William Schmaltz  
Purchasing Agent  
WI Dept. of Military Affairs

EXHIBIT C

EXHIBIT E

**Regional Response Team Budget Proposal 2000/2001**

**Team: Appleton/Oshkosh--(CAT Teams: Manitowoc/Brown County)**

Personnel Costs (# pers)	84	\$1,500	\$126,000
Incentive Costs (# pers)	84	\$750	\$63,000
Outreach (# Fire Depts)	127	\$100	\$12,700
Expendables			\$15,000
Equipment			\$10,000
Adjustments (Incentive Pay not required)			-\$57,000
<b>Annual Budget Proposal 2000/2001</b>			<b>\$169,700 ***</b>

\*\* Includes funding for Manitowoc and Brown County  
Chemical Assessment Teams at \$16,500 per team.

\*\*\* \$136,700 annually for the core team  
\$ 33,000 annually for the two CAT teams



**EXTENDED  
CONTRACT FOR  
REGIONAL HAZARDOUS MATERIALS  
RESPONSE TEAM SERVICES**

**JULY 1, 2000 THROUGH JUNE 30, 2002**

Between

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

And

**CITY OF EAU CLAIRE, WISCONSIN  
CITY OF CHIPPEWA FALLS, WISCONSIN  
ALSO COLLECTIVELY REFERRED TO AS THE  
WEST CENTRAL WISCONSIN HAZARDOUS RESPONSE TEAM**

DATE: June 30, 2000

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**EXTENDED  
CONTRACT FOR REGIONAL HAZARDOUS MATERIALS  
RESPONSE TEAM SERVICES**

**1.0 General Contract Information**

1.1 **Parties:** This extended contract is between the State of Wisconsin, Department of Military Affairs, Division of Emergency Management (hereinafter "Division") and the City of Eau Claire, Wisconsin and the City of Chippewa Falls, Wisconsin also collectively referred to as the West Central Wisconsin Hazardous Response Team (hereinafter "Contractor") for the provision of regional hazardous materials response team services as described herein and authorized under 1991 Wisconsin Act 104, as codified in §166.215 of the Wisconsin Statutes.

1.2 **Recitals:** WHEREAS, in order to protect life and property against the dangers of emergencies involving hazardous materials, the Division may assign and make available for use in any county, city or district, a regional hazardous materials response team.

WHEREAS, the Division desires to enter into this Agreement to establish Contractor as a Regional Hazardous Materials Response Team, 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 166.20(4), Wis. Stats.

1.3 **Contract Term:** This extended Agreement shall continue from the date indicated on the notice of intent to award and shall continue for an additional two years commencing July 1, 2000 through June 30, 2002.

**2.0 Definitions**

2.1 **Definitions:** The following definitions are used throughout this Agreement:

Agreement means this extended Contract, together with the Notice of Intent to Award, Exhibits and Addenda. Exhibits and Addenda include the following:

Exhibit A	Request for Proposal and Addenda
Exhibit B	West Central Wisconsin Hazardous Response Team Proposal
Exhibit C	Notice of Intent to Award and Designation Letter
Exhibit D	Primary Response Area
Exhibit E	Two-year Budget

State means the State of Wisconsin.

Department means the State of Wisconsin, Department of Military Affairs.

Division means the Division of Emergency Management.

Regional Team means one of the eight (8) fire departments chosen by the Division to provide regional Level A hazardous materials response that meets the standards under 29 CFR 1910.120(q)(6)(iv), as further amended. Under §166.215(1), Stats., the Division may only contract with public organizations.

Contractor means the City of Eau Claire, Wisconsin and the City of Chippewa Falls, Wisconsin also collectively referred to as the West Central Wisconsin Hazardous Response Team by which service or services will be performed under this Agreement.

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

Level A Release means a release that meets the specifications under §166.20(1)(ge) of the Wisconsin Statutes.

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.

Local Government Agency means a city, county, district or subdivision thereof.

Primary Response Area means the geographical region where the Contractor is principally responsible for providing regional hazardous response team services.

Regional Hazardous Materials Response Team means the Contractor and/or designated employees of the Contractor who are expected to respond to, control, and/or stabilize the actual or potential emergency release(s) of hazardous substances.

Responsible Party means the person(s), as defined in 42 U.S.C. §9606 and §9607, who possessed or controlled a hazardous substance which was discharged or who caused the discharge of a hazardous substance which caused the emergency to which Contractor has responded.

### **3.0 Statement of Work**

- 3.1 **Services to be provided by Contractor:** During the term of this Agreement, the Contractor agrees to provide regional hazardous response team services within the boundaries of Contractor's assigned Primary Response Area as described in Exhibit D, attached hereto and incorporated by reference herein.

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. 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 Contractor and as is reasonably necessary to operate within the safety levels of a regional hazardous materials response team.
- 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 Level A equipment and vehicles 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 Level A release.
- 3.5 **Vehicle and Equipment Use Limitations:** This Agreement in no way limits the Contractor from responding with Level A 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 within the Primary Response Area, 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 Standard Operating Guidelines provided in Subsection 3.8 herein.

- 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 level A response

within Contractor's Primary Response Area, then if notice has been provided to the Division, the Contractor may decline a request for regional emergency hazardous material response.

- 3.8 **Standard Operating Guidelines:** Contractor and Division agree that regional response team operations will be conducted in accordance with Standard Operating Guidelines and "Call Out Procedure" that will be mutually approved by the parties to this Agreement.

#### 4.0 Contractor Subsidy and Reimbursement

There are two types of Contractor costs under this Agreement: (1) Standby Costs, and (2) Team Response Costs. Each of these are discussed more fully below.

- 4.1 **Standby Costs:** As provided under §166.215(1) of the Wisconsin Statutes, Contractor will be subsidized annually, commencing fiscal year 2000/01, under this Agreement for its approved standby costs as described in "Exhibit E", attached hereto and incorporated by reference herein. Said payments to regional emergency response teams for standby costs shall be made from the appropriation account under §20.465(3)(dd) of the Wisconsin Statutes. Such standby costs include, but are not limited to:

(1) Specialized Training Expenses: The Division shall, subject to available funding, provide advanced training and education to Contractor's employees. Requests for such training must be approved by the Division in advance.

All such other training must comply with the governmental regulations associated with assigned duties under this Agreement. Such costs may include training, personnel costs, and per diem/travel expenses in accordance with the State rates. Where the Contractor demonstrates that its employees already meet or exceed Division-approved standards, then the allocated training funds shall be authorized for transfer within the Contractor's account.

(2) Medical Surveillance: Contractor shall provide Baseline, Maintenance and Exit Physicals for each regional hazardous material response team member.

(3) Response Vehicle(s) and Equipment Purchases: Standby costs provide for necessary equipment and supply purchases of Level A vehicle(s), supplies and equipment by Contractor. Where Contractor has obtained the required equipment contained on the Division-approved minimum required equipment list, allocated funds may be authorized for transfer within the Contractor's account. Title to any equipment purchased or fabricated pursuant to this Agreement shall be vested in Contractor. Such title shall be vested in the Contractor upon acquisition of the equipment or as soon as feasible thereafter.

The Division and Contractor acknowledge and agree that a primary project goal of the regional hazardous materials response team is to standardize Level A

vehicles and equipment on a statewide basis.

- 4.2 **Standby Cost Expenditures:** It is the intent of the Division that funds allocated under Subsection 4.1 of this Agreement shall supplement existing, budgeted moneys 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 moneys 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 government 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 §166.215(2) 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 the rates provided in "Exhibit B" to this Agreement.

(2) Personnel Expenses: Contractor's team response personnel expenses which are approved and authorized under this Agreement are reimbursable at the rates described in "Exhibit B". 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 §166.215(2) 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 §166.215(3), 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 4.4 and 4.6 herein.

- 4.4 **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 §166.22 of the Wisconsin Statutes.

4.5 **Where No Responsible Party Can Be Identified or the Responsible Party is Unable to Pay Team Response Costs:** As previously mentioned in Subsection 4.2 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 regional emergency response team has made a good faith effort to identify the person responsible under §166.215(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 regional emergency 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 4.6 herein.

4.6 **Maximum Contract Subsidy:** This Agreement shall have a maximum contract subsidy of \$164,800.00 per annum for stand-by costs as described in "Exhibit E" to this Agreement. The Division certifies that sufficient funds are available and authorized within the Division's current appropriation or limitation. The maximum contract subsidy does not, however, include Contractor's team response costs as specified in Subsection 4.2 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 §166.215(2), the amounts appropriated under §20.465(3)(dr) and subject to further payment as set forth above.

4.7 **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 §166.215(2), 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).

- 4.8 **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 §166.215(2), Wis. Stats. Contractor agrees to make reasonable and good faith efforts to minimize Responsible Party and/or Division expenses.
- 4.9 **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.

- 4.10 **Worker's Compensation:** A member of a regional hazardous materials response team who is acting under the scope of this Agreement is an employee of the State for purposes of Worker's Compensation under §166.215(4) of the Wisconsin Statutes.
- 4.11 **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.
- 4.12 **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.

## **5.0 Liability and Indemnity**

- 5.1 **Scope:** During operations authorized by this Agreement, Contractor and members of regional hazardous materials response teams shall be agents of the State and protected and defended against tort liability under §166.03(8)(e), Wis. Stats. For purposes of §895.46(1), Stats., members of the hazardous materials response team 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 regional hazardous materials emergency response team. Operations also includes advanced training activities provided under this contract to the members of a hazardous materials response team, but does not include travel to and from the training.
- 5.2 **Civil liability exemption; regional and county emergency response team:** Under §895.483 Wis. Stats., 1) a regional emergency response team, a member of such a team, and a local agency, as defined in §166.22(1)(c), that contracts with the Division for the provision of a regional response team, are immune from civil liability for acts or omissions related to carrying out responsibilities under a contract under §166.215(1); 2) a county 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 §166.21(2m)(e); and, 3) a local emergency planning committee created under §59.07(146)(a)1, Stats., that receives a grant under §166.21 is immune from civil liability for acts and omissions related to carrying out its responsibilities under §166.21.
- 5.3 **Statutory Civil Immunity:** §895.48(2) of the Wisconsin Statutes provides that a person