



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

Between

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

And

**SUPERIOR FIRE DEPARTMENT
CITY OF SUPERIOR, WISCONSIN**

DATE: June __, 1999

**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 Superior Fire Department, City of Superior, Wisconsin (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 be extended for an additional one (1) year commencing July 1, 1999 through June 30, 2000.

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	Superior Fire Department Proposal
Exhibit C	Notice of Intent to Award
Exhibit D	Primary Response Area
Exhibit E	Two-year Budget
Exhibit F	Hazardous Emergency Response Team Standard Operating

Guidelines

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 nine (9) 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 Superior Fire Department, City of Superior, 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 1998/99, 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. Training costs subsidized under this Agreement shall have a maximum value of \$38,600.00 per annum as described in "Exhibit E" to 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. The annual subsidy for medical costs and supplies is described in "Exhibit E" to this Agreement.

(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 as specifically described in "Exhibit E", attached hereto. 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.

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.

4.2 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.

4.3 **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.

4.4 **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.

4.5 **Maximum Contract Subsidy:** This Agreement shall have a maximum contract subsidy of \$178,000.00 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.

4.6 **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).

- 4.7 **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.
- 4.8 **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.

- 4.9 **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.
- 4.10 **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.
- 4.11 **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, 1999

Steven D. Sell, Division Administrator

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

Dated this ____ day of _____, 1999

Signature: _____

Printed Name: Margaret Ciccone

Title: Mayor

Address: City Hall, 1407 Hammond Avenue

City/State: Superior, WI Zip: 54880

On Behalf of the City of Superior

Dated this ____ day of _____, 1999

Signature: _____

Printed Name: Timothy M. Nelson

Title: Finance Director

Address: City Hall, 1407 Hammond Avenue

City/State: Superior, WI Zip: 54880

On Behalf of the City of Superior

Dated this ____ day of _____, 1999

Signature: _____

Printed Name: Carol Ahlberg

Title: City Clerk

Address: City Hall, 1407 Hammond Avenue

City/State: Superior, WI Zip: 54880

On Behalf of the Superior Fire Department

Dated this _____ day of _____, 1999

Signature: _____

Printed Name: Stephen A. Gotelaere

Title: Fire Chief

Address: 3326 Tower Avenue

City/State: Superior, WI Zip: 54880

Approved as to form:

Dated this _____ day of _____, 1999

Signature: _____

Printed Name: Thomas N. Hayden

Title: City Attorney

Address: City Hall, 1407 Hammond Avenue

City/State: Superior, WI Zip: 54880

REGIONAL LEVEL A TEAMS

AS OF APRIL 24, 1996

For additional information on Wisconsin's Hazardous Materials Response Team System contact Wisconsin Emergency Management at (608) 242-3228

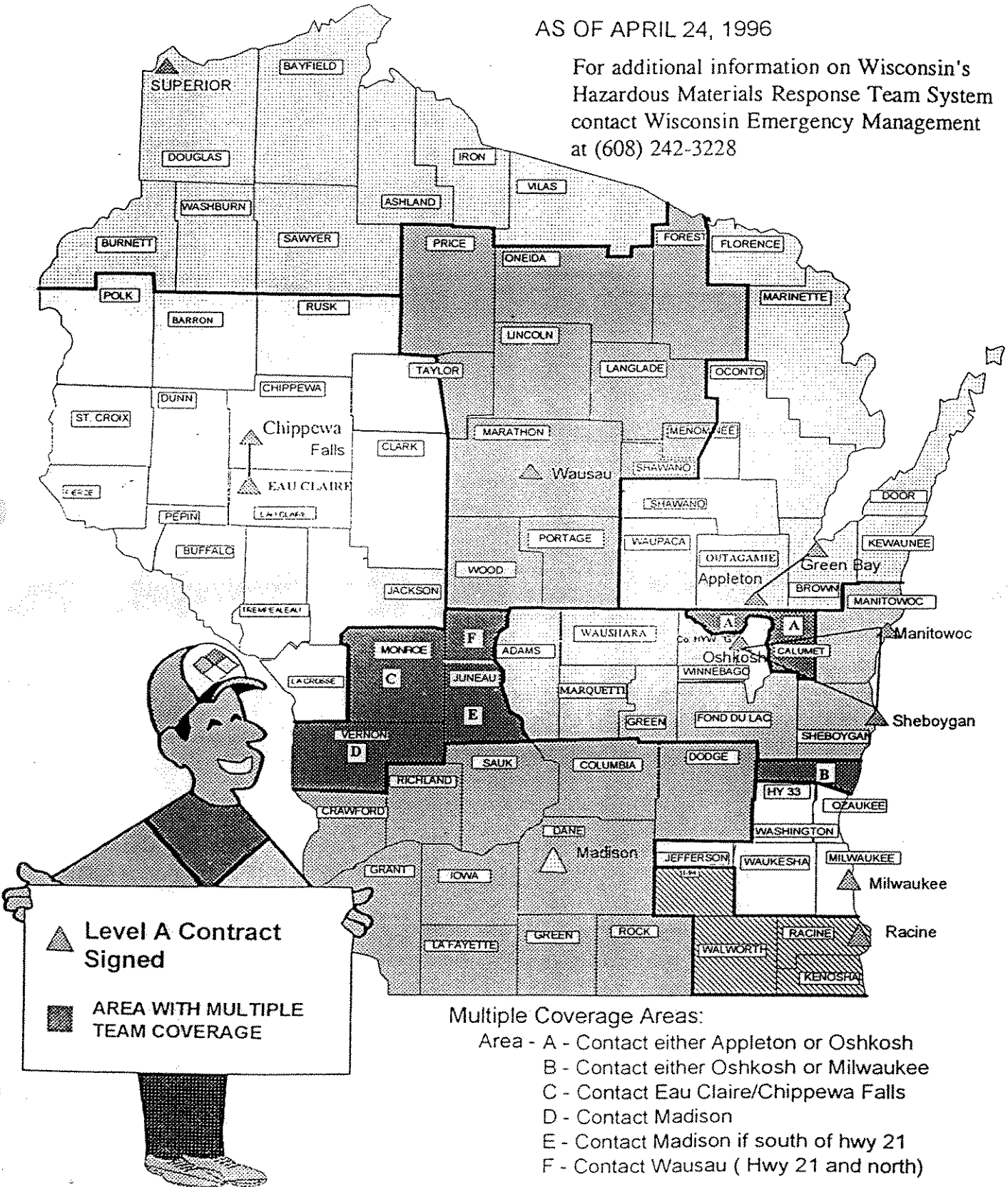


EXHIBIT E
CITY OF SUPERIOR FIRE DEPARTMENT

HazMat bu t new

ITEM	REMARKS	1998	1999
WAGES			
Director		\$ 2,000.00	\$ 2,000.00
Coordinator	\$1,200.00 annual plus 4%	\$ 8,000.00	\$ 8,000.00
Team Leaders	10 Team leaders @ \$800.00 each	\$ 12,000.00	\$ 12,000.00
SFD Team Members	30 members @ 400.00 each	\$ 6,000.00	\$ 6,000.00
Rural Coordinators	5 @ \$800.00 each plus training stipend of \$400.00 each	\$ 20,000.00	\$ 20,000.00
Rural Team Members	12 per each out-reach (4) @ \$400.00 each training stipend	\$ 48,000.00	\$ 48,000.00
	Sub		
PHYSICALS			
Superior Fire Dept	40 members @ \$400.00 each, every 2 years	\$ 8,000.00	\$ 8,000.00
Out-Reach	50 members @ \$400.00 each, every 2 years	\$ 10,000.00	
	Sub	\$ 18,000.00	\$ 8,000.00
TRAINING			
Initial-Technician	Replacing members - 1 class per year if local		
Travel and per-diem	3 SFD members	\$ 3,600.00	\$ 3,600.00
Recurring/Proficiency	annual refresher per CFR 1910.120 and NFPA 472	\$ 10,000.00	\$ 10,000.00
Advance Formal Train	10% of members per year, HZIM, speciality CFR 1910.120	\$ 10,000.00	\$ 10,000.00
	Travel and per-diem	\$ 12,500.00	\$ 12,500.00
Exercises			
pre-planning		\$ 500.00	\$ 500.00
table talks		\$ 500.00	\$ 500.00
exercise day		\$ 500.00	\$ 500.00
Aids/Props/AV Equipment		\$ 5,000.00	\$ 1,000.00
	Sub	\$ 42,600.00	\$ 38,600.00
OUT-REACH PROG	Hayward, Ashland, Brule, & Webster 4 X \$5,000.00	\$ 20,000.00	\$ 20,000.00
	Sub	\$ 20,000.00	\$ 20,000.00

Administration			
finance dept	record keeping, travel vouchers, funds management		
personnel dept	record keeping, personnel management		
office supplies	mail, file folders etc	\$ 300.00	\$ 300.00
Regional Network	regional continuity and coordination	\$ 5,000.00	\$ 5,000.00
	Sub	\$ 5,300.00	\$ 5,300.00
SARA III / TIER II			
Report Management	Report management, pre-planning and site visits	\$ 1,000.00	\$ 1,000.00
	Sub	\$ 1,000.00	\$ 1,000.00
Meetings-Out Reach			
Directors	Travel and per-diem	\$ 2,190.00	\$ 2,190.00
Coordinators	Contractual salary	\$ 3,393.00	\$ 3,393.00
	Travel and per-diem	\$ 5,652.00	\$ 5,652.00
WEM Counties & Reg	Contractual salary	\$ 3,252.00	\$ 3,252.00
	Travel and per-diem	\$ 336.00	\$ 336.00
Associations	Contractual salary	\$ 3,252.00	\$ 3,252.00
	Travel and per-diem	\$ 336.00	\$ 336.00
	Sub	\$ 18,411.00	\$ 18,411.00
Communications			
Radios	1/4 contract maint.agreement	\$ 1,190.00	\$ 1,190.00
portables	9 @ \$750.00	\$ 6,750.00	\$ 6,750.00
vehicles			
Pagers	10 @ 400.00 each	\$ 4,000.00	\$ 4,000.00
Phone (land & cell)	\$18.00 *4	\$ 864.00	\$ 864.00
	Sub	\$ 12,804.00	\$ 12,804.00

Equipment					
Command vehicle maintenance		\$	425.00	\$	425.00
Truck-Command/Resource maintenance		\$	900.00	\$	900.00
Rescue/Hazmat maintenance		\$	600.00	\$	600.00
	Sub	\$	1,925.00	\$	1,925.00
EXPENDABLES	Miscellaneous	\$	4,500.00	\$	4,500.00
Air Monitoring (Gas Meters)					
maintenance replacement	sensors and calibration gas \$1,200 gas & \$1,020 sensors (2) 3 gas meters @ \$1,500.00 each	\$	2,220.00	\$	2,220.00
		\$	3,000.00	\$	3,000.00
SCBA					
maintenance replacement	12.00 X 45 bottles 3 @ \$1,950	\$	540.00	\$	540.00
		\$	5,850.00	\$	5,850.00
Refill Station					
maintenance replacement	air sampling	\$	350.00	\$	350.00
	Sub	\$	16,460.00	\$	16,460.00
PROTECTIVE EQUIPMENT					
Level "A" Fair wear	Life Expectancy replacement	\$	15,000.00	\$	7,000.00
Level "B"		Sub	15,000.00	\$	7,000.00
DECON					
Expendables/training		\$	500.00	\$	500.00
	Sub	\$	500.00	\$	500.00
TOTALS		\$	200,000.00	\$	178,000.00



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

Between

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

And

CITY OF WAUSAU, WISCONSIN

DATE: June __, 1999

**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 Wausau Fire Department, City of Wausau, Wisconsin (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 be extended for an additional one year commencing July 1, 1999 through June 30, 2000.

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	Wausau Fire Department 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 nine (9) 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 Wausau Fire Department, City of Wausau, 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 1998/99, 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. Training costs subsidized under this Agreement shall have a maximum value of \$63,199.50 per annum as described in "Exhibit E" to 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. The annual subsidy for medical costs and supplies is described in "Exhibit E" to this Agreement.

(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 as specifically described in "Exhibit E", attached hereto. 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.

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.

4.2 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.

4.3 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.

4.4 **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.

4.5 **Maximum Contract Subsidy:** This Agreement shall have a maximum contract subsidy of \$130,301.00 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.

4.6 **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).

- 4.7 **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.
- 4.8 **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.

- 4.9 **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.
- 4.10 **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.
- 4.11 **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, 1999

Steven D. Sell, Division Administrator

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

Dated this ____ day of ____, 1999

Signature: _____
Printed Name: Linda Lawrence
Title: Mayor
Address: City Hall, 407 Grant Street
City/State: Wausau, WI Zip: 54403

On Behalf of the City of Wausau

Dated this ____ day of ____, 1999

Signature: _____
Printed Name: Gary L. Klingbeil
Title: City Clerk
Address: City Hall, 1407 Hammond Avenue
City/State: Wausau, WI Zip: 54880

On Behalf of the Wausau Fire Department

Dated this ____ day of ____, 1999

Signature: _____
Printed Name: Gary Buchberger
Title: Fire Chief
Address: 606 E. Thomas Street
City/State: Wausau, WI Zip: 54403

Approved as to form:

Dated this ____ day of _____, 1999

Signature: _____

Printed Name: William P. Nagle

Title: City Attorney

Address: City Hall, 407 Grant Street

City/State: Wausau, WI Zip: 54403

REGIONAL LEVEL A TEAMS

AS OF APRIL 24, 1996

For additional information on Wisconsin's
Hazardous Materials Response Team System
contact Wisconsin Emergency Management
at (608) 242-3228

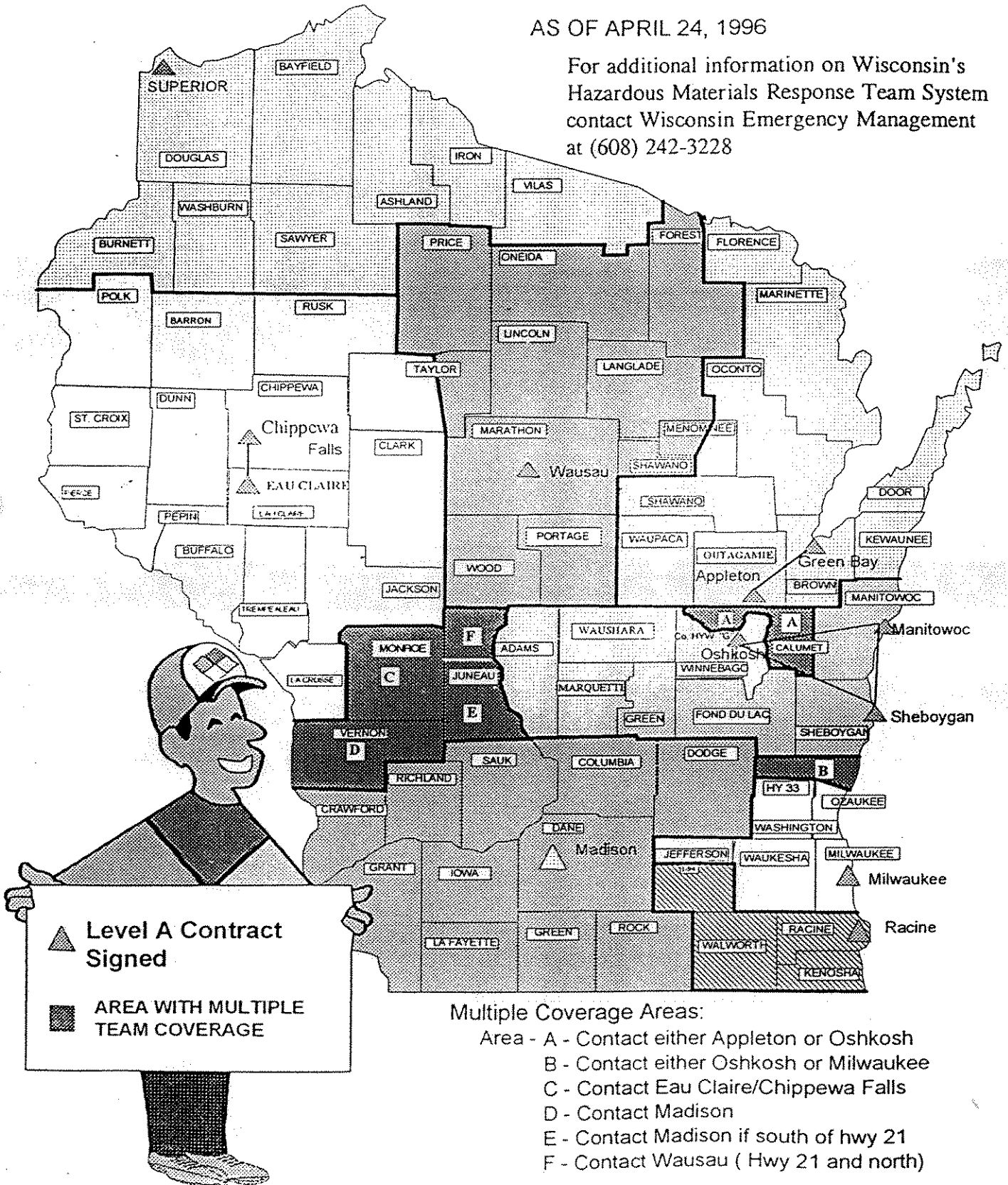


EXHIBIT E

HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM BUDGET REQUEST FOR WAUSAU TEAM #7

EQUIPMENT COSTS	7/1/98 - 6/30/99	7/1/99 - 6/30/00	TOTALS
Calibration gas	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00
Detector tubes	400.00	400.00	800.00
Reference books	400.00	400.00	800.00
Office supplies	1,800.00	1,800.00	3,600.00
Disposable chemical suits	2,480.00	2,490.00	4,970.00
Maintenance of Haz Mat Vehicles	1,700.00	1,700.00	3,400.00
Miscellaneous maintenance items	2,500.00	2,500.00	5,000.00
Haz Mat vehicles liability insurance	1,050.00	1,050.00	2,100.00
Subscriptions/membership (Haz mat periodicals & organizations)	370.00	370.00	740.00
Computer services (CAMEO/ALOHA)	430.00	430.00	860.00
Instrument sensors	1,000.00	1,000.00	2,000.00
TOTAL	\$ 13,130.00	\$ 13,140.00	\$ 26,270.00

ANNUAL MEDICAL COSTS	7/1/98 - 6/30/99	7/1/99 - 6/30/00	TOTALS
Haz Mat physicals for team members	\$ 12,840.00	\$ 13,560.00	\$ 26,400.00

LOGISTICAL SUPPORT	7/1/98 - 6/30/99	7/1/99 - 6/30/00	TOTALS
Chief's salary @ 1 hr/week	\$ 2,450.00	\$ 2,585.00	\$ 5,035.00
Secretary's salary @ 1 hr/week	1,153.50	1,217.50	2,371.00
Mechanic's salary @ 1 hr/week	1,270.50	1,308.50	2,579.00
Firefighter's salary @ 2 hr/week	2,204.00	2,270.00	4,474.00
Team members pay (union contract)	23,880.50	25,675.50	49,556.00
TOTAL	\$ 30,958.50	\$ 33,056.50	\$ 64,015.00

Contingency Fund	7/1/98 - 6/30/99	7/1/99 - 6/30/00	TOTALS
Haz Mat State Coordinator Fee	\$ 5,000.00	\$ 5,000.00	\$ 10,000.00
Travel expenses/meals/lodging for Chief and Team Coordinator attending semi-monthly meetings	2,345.00	2,345.00	4,690.00
TOTALS	\$7,345.00	\$ 7,345.00	\$ 14,690.00

TRAINING COSTS () indicates # personnel trained each year	7/1/98 - 6/30/99 Tuition/lodging/meal s/travel/overtime	7/1/99 - 6/30/00 Tuition/lodging/meal s/travel/overtime	TOTALS
Safety Officer (2)	\$ 4,790.00	\$ 4,790.00	\$ 9,580.00
Branch Officer, Haz Mat (2)	4,690.00	4,690.00	9,380.00
Haz Mat Patient Transport (2)	3,522.50	3,522.50	7,045.00
Instrument Specialist (2)	3,522.50	3,522.50	7,045.00
Chemistry of Haz Mat (4)	5,840.00	5,840.00	11,680.00
Haz Mat Incident Commander (2)	7,515.00	7,515.00	15,030.00
CAMEO/ALOHA (4)	4,375.00	4,375.00	8,750.00
Haz Mat Spill Conferences (2)	1,975.00	1,975.00	3,950.00
Terrorism Training (2)	4,790.00	4,790.00	9,580.00
RR Tank Car Training (2)	7,375.00	7,375.00	14,750.00
Haz Mat Technician (2)	2,560.00	2,560.00	5,120.00
TOTALS	\$ 50,955.00	\$ 50,955.00	\$101,910.00

ADDITIONAL TRAINING NEEDS	7/1/98 - 6/30/99	7/1/99 - 6/30/00	TOTALS
Scenarios with off duty personnel 2 per year with 16 personnel each scenario	\$ 6,174.50	\$ 6,174.50	\$12,349.00
Outreach program to 6 counties each year	3,510.00	3,510.00	7,020.00
Overtime for in house Haz Mat Instructor	2,560.00	2,560.00	5,120.00
TOTAL	\$ 12,244.50	\$ 12,244.50	\$24,489.00

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Summary of the above costs per year are:

1. Request for 7/1/98 - 6/30/99 = \$ 127,473.00
 2. Request for 7/1/99 - 6/30/00 = 130,301.00
- Two year TOTAL \$ 257,774.00**

As prepared by Interim Chief William R. Steines.

W. R. S.