



CONTRACT FOR WISCONSIN HAZARDOUS MATERIALS RESPONSE SYSTEM SERVICES

JULY 1, 2021 THROUGH JUNE 30, 2023

Between

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

And

**CITY OF MILWAUKEE, WISCONSIN
CITY OF RACINE, WISCONSIN
CITY OF FOND DU LAC, WISCONSIN
BOLTONVILLE FIRE DEPARTMENT, WISCONSIN
SHEBOYGAN COUNTY, WISCONSIN
ALSO COLLECTIVELY REFERRED TO AS THE
SOUTHEAST WISCONSIN HAZARDOUS MATERIALS TASKFORCE**



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

1.0 General Contract Information

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

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

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

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

1.3 **Contract Term:** This Agreement shall continue for two years commencing July 1, 2021 through June 30, 2023.

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

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

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

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

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

State means the State of Wisconsin.

Department means the State of Wisconsin Department of Military Affairs.

Division means the Division of Emergency Management.

Contractor means the City of Milwaukee, the City of Racine, the City of Fond du Lac, Boltonville Fire Department, and Sheboygan County, Wisconsin, also collectively referred to as the Southeast Wisconsin Hazardous Materials Taskforce by which hazardous materials response service or services to Level A releases will be performed under this Agreement. Under Wis. Stat. §323.70(2), the Division may only contract with a local agency.

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

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

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

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

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

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

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

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

Biological, Radiological, Nuclear, and Explosive (CBRNE) incidents.

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

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

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

3.0 Statement of Work

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

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

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

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

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

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

- 3.7 **Right of Refusal:** If, on occasion, a response under this Agreement would temporarily place a verifiable undue burden on the Contractor because Contractor's resources are otherwise inadequate or unavailable and mutual aid is unavailable for a hazardous materials response within the State, then, if notice has been provided to the Division, the Contractor may decline a request for hazardous material response system services.
- 3.8 **Standard Operating Guidelines:** Contractor and Division agree that hazardous materials response system operations will be conducted in accordance with Wisconsin Hazardous Materials Response System Operations Plan, and "Call Out Procedure" that will be mutually approved by the parties to this Agreement.
- 3.9 **Mutual Aid Box Alarm System (MABAS):** Contractor is highly encouraged to participate in the MABAS-WI program. At a minimum and absent MABAS-WI participation, Contractor will be qualified and credentialed under all NIMS standards for hazardous materials.
- 3.10 **Standardized Equipment Reports:** In order to prepare, plan, and respond to the dangers of emergencies involving Level A releases, the Division shall require standardized equipment purchases and inventory for the Wisconsin Hazardous Materials Response System. Contractor shall update, on an annual basis, the Standardized Equipment that provides a current inventory of all hazardous materials equipment assets including but not limited to the manufacturer, date of purchase, and calibration requirements. The Contractor will input equipment inventory on the Division's secure Wisconsin Fire Bridge (ImageTrend Rescue Bridge) website located at www.wifirebridge.com or equivalent. The annual Equipment Inventory shall be updated after January 1, or when new equipment is added during the calendar year. Failure to submit timely Equipment Inventory may result in the withholding of quarterly Annual Allocation payments provided for under this Agreement.
- 3.11 **Operating Expenditure Reports:** In order to prepare, plan, and respond to the dangers of emergencies involving Level A releases, the Division shall collect standardized operating expenditure information from Contractor including but not limited to wages and stipend costs. Contractor shall provide the Division, on a quarterly basis, with an Operating Expenditure Report that provides a current listing of its hazardous materials team operating expenditures on an electronic spreadsheet developed by the Division. The Division will input Contractor's operating expenditures on the Division's secure WebEOC website located at wi.webeocasp.com, or equivalent. The quarterly Operating Expenditure Reports shall be provided to the Division no later than thirty (30) days after the end of each quarter. Failure to submit timely Operating Expenditure Reports may result in the withholding of quarterly payments under this Agreement until such report is received.

- 3.12 **Hazardous Materials Incident Reporting:** To prepare, plan, and respond to the dangers of emergencies involving Level A releases, the Division shall collect accurate, actual, and standardized hazardous materials assist and response data. Further, Contractor shall report all hazardous materials incidents (local/county or State) in the ImageTrend/WI Fire Bridge website (<http://www.wifirebridge.com>), or equivalent. The Hazardous Materials Incident Report shall be completed and submitted no later than five (5) business days after the end of the incident. Failure to submit timely Hazardous Materials Incident Reports may result in the withholding of quarterly payments under this Agreement until the report is submitted.
- 3.13 **Wisconsin Hazardous Material Response System Member Rosters:** Under Subsection 4.11 herein, members of the Wisconsin Hazardous Materials Response System are considered state employees for Worker's Compensation purposes. It is paramount that the Division has a current listing of all members in order to ensure coverage. Contractor shall provide the Division, on a quarterly basis, with a current listing of its members on an electronic spreadsheet developed by the Division. Failure to submit timely Member Rosters may result in the withholding of quarterly payments under this Agreement.

4.0 Contractor Annual Allocation, Reimbursement, and Grants

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

- 4.1 **Annual Allocation and Quarterly Payments:** As provided under §323.70(2) of the Wisconsin Statutes, Contractor will be subsidized annually, commencing 7/1/2021 and for State Fiscal Years 2021/2022 through 2022/2023, under this Agreement for its approved Annual Allocation as described in "Exhibit B", attached hereto and incorporated by reference. The payments shall be made to Contractor on a quarterly basis, with the first payment to be made at the end of the first quarter, if all required quarterly reports have been submitted for the quarter at issue and if the Agreement has not been terminated or cancelled as of the beginning of the quarter at issue, in which case no further payments will be made to Contractor for the Annual Allocation. Funding amounts will be based by Type I, Type II, and Type III Hazardous Materials Team designation. The Annual Allocation is intended to cover direct and indirect costs necessary to ensure the proper number of trained personnel per shift depending on the type of response, a stipend per response system member as well as baseline, maintenance, and exit physicals for each response system member. Quarterly Annual Allocation payments to Contractor shall be made from the appropriation account under §20.465(3)(dd) of the

Wisconsin Statutes.

- 4.2 **Annual Allocation Expenditures:** Funds allocated under Subsection 4.1 of this Agreement shall supplement existing, budgeted monies of the Contractor to provide the services specified herein and may not be used to replace, decrease or release for alternative purposes the existing, budgeted monies of or provided to the Contractor.

Further, funds allocated under Subsection 4.1 of this Agreement shall not be used by the local agency to supplement, offset, replace, decrease or release any budgetary obligations for other municipal departments not directly connected to this Agreement.

4.3 **Team Response Costs and Reimbursement:**

- 4.3.1 Pursuant to §323.70(3) of the Wisconsin Statutes and as set forth in this Section 4, Contractor shall be reimbursed for reasonable and necessary team response costs and expenses incurred in performing services under this Agreement.

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

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

(2) Personnel Expenses: Contractor's team response personnel expenses which are approved and authorized under this Agreement are reimbursable at the rates described as follows:

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

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

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

(3) Emergency Expenses: Contractor's necessary and reasonable emergency expenses related to services rendered under this Agreement are reimbursable. All such expenses must be based on actual expenditures and

fully documented by the Contractor. The Division reserves the right to deny any reimbursement of unjustifiable Contractor expenditures.

- 4.3.2 Reimbursement by the Division of reimbursable response costs shall be limited to amounts collected by the Division from Responsible Parties and an amount appropriated under Wis. Stat. § 20.465(3)(dr). Reimbursement is available under §20.465(3)(dr) only if Contractor has made a good faith effort to identify the Responsible Party and the Responsible Party cannot be identified, or, if identified, Contractor has received reimbursement from the Responsible Party to the extent financially able or has determined that the Responsible Party does not have adequate money or other resources to reimburse the regional emergency response team.
- 4.3.3 If a Contractor does not elect to collect team response costs expenses directly from the Responsible Party(ies) and/or seek reimbursement for local agency response pursuant to §323.71 of the Wisconsin Statutes, the Division shall bill, pursuant to subsection 4.8, Billing System for Division Reimbursement of Team Response Costs, all known Responsible Party(ies).
- 4.3.4 To seek Division reimbursement from the emergency response supplement created under Wis. Stat. §20.465(3)(dr), 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 4.8 herein.
- 4.4 **Training Costs:** In addition to the Annual Allocation, funding may be available to Contractor through the Division's training and equipment grants. Applications shall be made via "E-Grants" and will be available to Contractor based upon established criteria. The Division makes no representations that funding will be available to all parties.
- 4.5 **Standard Equipment Purchases and Cache:** It is the intent of the Division to standardize equipment purchases for the Wisconsin Hazardous Materials Response System. Contractor shall provide the Division with a current listing of its equipment assets including the manufacturer, date of purchase, and calibration requirements. The Division will develop a standardized equipment list including vendor information.

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

It is the intent of the Division to develop and maintain an equipment cache. When

developed, Contractor may borrow specific equipment from the equipment cache in the event of an equipment failure requiring repair of Contractor's equipment.

- 4.6 **Minimum Appropriation:** The Division has requested in its State Fiscal Years 2021-2023 budget a sum to cover the Annual Allocation for those fiscal years as described in "Exhibit B" to this Agreement. If at least that amount is appropriated, then that amount shall be the minimum amount payable annually to response teams, with any additional amounts that might be appropriated payable pro rata to the response teams as part of the Annual Allocation. The minimum contract Annual Allocation does not, however, include Contractor's team response costs as specified in Subsection 4.3 of this Agreement.
- 4.7 **Full Payment and Release:** The Division's reimbursement(s) shall be full payment for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work authorized under this Agreement. Acceptance of payment by the Contractor shall operate as a release of the Division of all claims by Contractor for reimbursement of team response costs except where partial payment has been made due to limitations of the Division funds under §323.70(3), the amounts appropriated under §20.465(3)(dr) and subject to further payment as set forth above.
- 4.8 **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 last day of the response. If the Contractor seeks Division reimbursement under §323.70(3), or from the emergency response supplement created under Wis. Stat. §20.465(3)(dr), Contractor shall file a Notice of Intent with the Division for response costs within thirty (30) days of the last day of the response. The Division will not bill Responsible Parties or reimburse Contractor from the emergency response supplement created under §20.465(3)(dr), 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, which may include administrative costs.

If the Contractor does not bill the Responsible Party(ies) itself, the Division shall bill identified Responsible Party(ies) 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(ies) before payment is made to the Contractor. Thereafter, if the Division successfully recovers payment from the Responsible Party(ies), it shall first be used to pay the Contractor's team response costs, if these have not been paid in their entirety, and 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(ies), 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 Wis. Stat § 20.465(3)(dr) to the extent available, within thirty (30) days from the date that the Division determines either that there is no identifiable Responsible Party or the Responsible Party is unable to pay, but only if the Division has received an invoice for the costs and complete documentation by that time. If the Division has not received an invoice and complete documentation by that time, then the Division will reimburse Contractor as provided above within 30 days of receiving the invoice and complete documentation. Contractor's claim for reimbursement from the emergency response supplement created under Wis. Stat. § 20.465(3)(dr) 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).

- 4.9 **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 Wis. Stat. § 323.70(3). Contractor agrees to make reasonable and good faith efforts to minimize Responsible Party and/or Division expenses.
- 4.10 **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.
- 4.11 **Worker's Compensation:** A member of the Wisconsin Hazardous Materials Response System who is acting under the scope of this Agreement is an employee of the State for purposes of Worker's Compensation under §323.70(5) of the Wisconsin Statutes.
- 4.12 **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.

4.13 **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.

4.14 **Team Members:** Members of the hazardous materials response teams are firefighters and therefore are considered protective occupation employees.

5.0 Liability and Indemnity

Nothing contained in this Agreement is intended to limit any immunities and rights of any party available under Wis. Stat. §§ 345.05 and 893.80, which are expressly reserved to the parties.

5.1 **Scope** During operations authorized by this Agreement, Contractor employees who are part of Contractor's emergency management program shall be agents of the State and protected and defended against tort liability under Wis. Stat. §323.41. For purposes of Wis. Stat. § 895.46(1), members of the Wisconsin Hazardous Materials Response System shall, during authorized operations, be considered agents of the State and the State will indemnify Contractor as required under Wis. Stat. § 895.46(1). For purposes of this section, operations means activities, including travel, directly related to a particular emergency response involving a hazardous material response/incident by a hazardous materials response system team. Operations also include specialized training activities provided under this Agreement to the members of a hazardous materials response system team but does not include travel to and from the training.

5.2 **Civil liability exemption; hazardous material and local emergency response team:** Under Wis. Stat. § 895.483(1), a hazardous material emergency response team, a member of such a team, and a local agency, as defined in Wis. Stat. § 323.70(1)(b), that contracts with the Division for the provision of a hazardous material response team, are immune from civil liability for acts or omissions related to carrying out responsibilities under a contract under Wis. Stat. § 323.70(2).

5.3 **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, and its departments, officers, divisions, agents, employees, and members from all claims, suits or actions of any nature, including claims for attorneys' fees, arising out of the activities or omissions of Contractor, subcontractors, its officers, agents, or employees.

6.0 Insurance Provisions

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

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

- 6.2 **Automobile Liability:** Contractor shall obtain and keep in effect automobile liability insurance for all owned, non-owned and hired vehicles that are used in carrying out this Agreement. This coverage may be written in combination with the commercial liability and property damage insurance mentioned in Subsection 6.1. Minimum coverage shall be one million (\$1,000,000) per occurrence combined single limit for automobile liability and property damage. The State reserves the right to require higher or lower limits where warranted.

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

- 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 to the Wisconsin Department of Military Affairs' General Counsel 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 and annually thereafter.

7.0 Standard Contract Terms, Conditions and Requirements

- 7.1 **Disclosure of Independence and Relationship:** Contractor certifies that no relationship exists between its membership in the hazardous materials response system, the State, or the Division that interferes with fair competition or is a conflict of interest, and no relationship exists between the team and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interest of the State.

Contractor agrees as part of this contract for services that during performance of this contract, they will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the State.

- 7.2 **Dual Employment:** Section 16.417 of the Wisconsin Statutes, prohibits an individual who is a state employee or who is retained as a consultant full-time by a state agency from being retained as a consultant by the same or another agency where the individual receives more than \$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 Wis. Stat. §§ 180.0831 and 181.225 regarding conflicts of interest by directors in the conduct of state contracts.
- 7.5 **Recordkeeping and Record Retention:** The Contractor shall establish and maintain adequate records of all expenditures incurred under the Agreement. All records must be kept in accordance with generally accepted accounting principles and be consistent with federal and state laws and local ordinances. The Division, the federal government, and their duly authorized representatives shall have the right to audit, review, examine, copy and transcribe any pertinent records or documents relating to any contract resulting from this Agreement held by

Contractor. The Contractor shall retain all documents applicable to the Agreement for a period of not less than three (3) years after the final payment is made or longer where required by law.

7.6 **Team Personnel Removal:** In the event that an individual hazardous materials system member is substantiated to have been negligent or unresponsive to the contractual requirements, the Division, after consultation with Contractor and Contractor's Fire Commission/Board, may recommend the removal of this member from the hazardous material response system. A request by the Division to dismiss an employee shall not constitute an order to discipline or discharge the employee. All actions taken by the system and/or fire department management with regard to employee discipline shall be at the sole discretion of the system and/or fire department management.

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

7.8 **Termination of Agreement:**

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

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

- (1) Division funding from federal, state, or other sources is not obtained and/or continued at levels sufficient to allow for payments under this Agreement.
- (2) Federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments by this Agreement.

- (3) Any license or certification required by law or regulation to be held by the Contractor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- (4) Failure of Contractor to comply with the terms, conditions and specifications of the Agreement.

Any termination of the Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination, except as provided elsewhere in the Agreement.

7.9 **Cancellation:** The continuation of payments under this Agreement beyond the limits of the funds already available is contingent upon the future availability of funds to support such payments. The State of Wisconsin reserves the right to immediately cancel any contract in whole or in part without penalty due to non-appropriation of funds. Upon cancellation, response costs and expenses incurred up to that date will be reimbursed to the extent of recovery from the Responsible Party and any appropriated amounts available and a prorated amount of Annual Allocations will be made to the extent funds have been appropriated.

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 performance of services authorized by this Agreement whether or not subcontractors are used.

Contractor is encouraged to purchase services and supplies when/if applicable from minority businesses certified by the Wisconsin Department of Development, Bureau of Minority Business Development.

7.11 **Executed Contract to Constitute Entire Agreement:** The written Agreement with referenced Exhibits and attachments shall constitute the entire agreement of the parties regarding the subject matter of the Agreement and supersedes all prior discussions, negotiations and agreements, written or oral, with respect to the subject matter of this Agreement

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

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

Copies of such written reports shall also be sent to:

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

- 7.17 **Severability:** If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 7.18 **Amendments:** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of Division and Contractor and approval, by passive review or otherwise, of the Wisconsin Joint Committee on Finance.
- 7.19 **Approval Authority:** Contractor's representative(s) certify by their signature herein that he or she has the necessary and lawful authority to enter into contracts and agreements on behalf of the local government entity.

- 7.20 **Insufficient Funds:** The obligation of the Contractor under this Agreement is contingent upon the availability and allotment of funds by the Division to Contractor and Contractor may, upon thirty (30) days prior written notice, terminate this contract if funds are not available.
- 7.21 **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 thereof, 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.
- 7.22 **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.
- 7.23 **Disparity:** In the event of a discrepancy, difference or disparity in the terms, conditions or language contained in the Agreement, on the one hand, and its Exhibits on the other, it is agreed between the parties that the language in this document, to which the Exhibits are attached, shall prevail.
- 7.24 **Amendment to Comply With Law.** If any laws are enacted that affect the subject matter of this Agreement, the Parties agree to amend this Agreement to reflect the substance of such laws as soon as practicable. Such amendment must first be submitted to the Joint Finance Committee for passive or actual approval prior to being fully executed.
- 7.25 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed the original, but all of which together shall constitute one and the same instrument.

Approving Signatures:

ON BEHALF OF THE DIVISION OF EMERGENCY MANAGEMENT (DIVISION)

Dated this ____ day of _____, 2021.

Dr. Darrell Williams, Division Administrator

On Behalf of the City of Milwaukee
A Municipal Corporation

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Tom Barrett

Title: Mayor

Address: City Hall, 200 E. Wells Street, Room 201

City/State: Milwaukee, WI Zip: 53202

On Behalf of the City of Milwaukee

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Jim Owczarski

Title: City Clerk

Address: City Hall, 200 E. Wells Street, Room 205

City/State: Milwaukee, WI Zip: 53202

On Behalf of the City of Milwaukee

Dated this ____ day of _____, 2021

Countersigned: _____

Printed Name: Aycha Sawa

Title: City Comptroller

Address: City Hall, 200 E. Wells Street, Room 404

City/State: Milwaukee, WI Zip: 53202

On Behalf of the City of Milwaukee Fire Department

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Aaron D. Lipski

Title: Fire Chief

Address: 711 W. Wells Street

City/State: Milwaukee, WI Zip: 53233

Approved as to form:

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Tearman Spencer

Title: City Attorney

Address: City Hall, 200 E. Wells Street, Room 800

City/State: Milwaukee, WI Zip: 53202

On Behalf of the City of Racine
A Municipal Corporation

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Cory Mason

Title: Mayor

Address: City Hall, 730 Washington Avenue

City/State: Racine, WI Zip: 53403

On Behalf of the City of Racine

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Tara Coolidge

Title: City Clerk & Treasury Manager

Address: City Hall, 730 Washington Avenue, Room 103

City/State: Racine, WI Zip: 53403

On Behalf of the City of Racine

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Kathleen Fischer

Title: City Finance Director

Address: City Hall, 730 Washington Avenue, Room 103

City/State: Racine, WI Zip: 53403

On Behalf of the City of Racine Fire Department

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Steve Hansen

Title: Fire Chief

Address: 810 Eighth Street

City/State: Racine, WI Zip: 53403

Approved as to form:

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Scott R. Letteney

Title: City Attorney

Address: City Hall, 730 Washington Avenue

City/State: Racine, WI Zip: 53403

On Behalf of the City of Fond du Lac

Dated this ____ day of _____, 2021

Signature: _____

**Printed Name: Joseph P. Moore
Title: City Manager
Address: 160 South Macy Street
City/State: Fond du Lac, WI Zip: 54935**

On Behalf of the City of Fond du Lac

Dated this ____ day of _____, 2021

Signature: _____

**Printed Name: Margaret Hefter
Title: City Clerk
Address: 160 South Macy Street
City/State: Fond du Lac, WI Zip: 54935**

On Behalf of the City of Fond du Lac

Dated this ____ day of _____, 2021

Countersigned: _____

**Printed Name: Tracy Salter, CPA
Title: Director of Administration
Address: 160 South Macy Street
City/State: Fond du Lac, WI Zip: 54936-0150**

On Behalf of the City of Fond du Lac Fire Department

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Peter O'Leary

Title: Fire Chief

Address: 815 S. Main Street

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

Approved as to form:

Dated this ____ day of _____, 2021

Signature: _____

Printed Name: Deborah S.R. Hoffmann

Title: City Attorney

Address: 160 South Macy Street

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

On Behalf of the Boltonville Fire Department in Washington County

Dated this ____ day of _____, 2021

Signature: _____
Printed Name: Darryl Pree
Title: President, Boltonville Fire Department
Address: 9336 Bolton Drive
City/State: Kewaskum, WI Zip: 53040-9729

Dated this ____ day of _____, 2021

Signature: _____
Printed Name: Stephen Schumaker
Title: Secretary, Boltonville Fire Department
Address: 9336 Bolton Drive
City/State: Kewaskum, WI Zip: 53040-9729

On Behalf of Sheboygan County

Dated this ____ day of _____, 2021

Signature: _____

**Printed Name: Adam N. Payne
Title: County Administrator
Address: 508 New York Ave, Rm 311
City/State: Sheboygan, WI Zip: 53081**

Dated this ____ day of _____, 2021

Signature: _____

**Printed Name: Laura M. Henning-Lorenz
Title: County Treasurer
Address: 508 New York Ave, Rm 109
City/State: Sheboygan, WI Zip: 53081**

Approved as to form:

Dated this ____ day of _____, 2021

Signature: _____

**Printed Name: Crystal Fieber
Title: Corporation Counsel
Address: 2124 Kohler Memorial Drive, Suite 310
City/State: Sheboygan, WI Zip: 53081-3174**

Exhibit A

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

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

5.1 The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

5.2 Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

5.3 Pursuant to s. 16.75(10p), Wis. Stats., contractor agrees it is not, and will not for the duration of the contract, engage in a prohibited boycott of the State of Israel as defined in s. 20.931(1)(b). State agencies and authorities may not execute a contract and reserve the right to terminate an existing contract with a company that is not compliant with this provision. This provision applies to contracts valued \$100,000 or over.

5.4 Pursuant to 2019 Wisconsin Executive Order 1, contractor agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.

6.0 CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

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

8.0 PUBLIC RECORDS ACCESS: Pursuant to Wis. Stat. §19.36 (3), all records of the contractor that are produced or collected under this contract are subject to disclosure pursuant to a public records request. Upon receipt of notice from the State of Wisconsin of a public records request for records produced or collected under this contract, the contractor shall promptly provide the requested records to the contracting agency. Contractor agrees to contact the State promptly upon receiving a request for information under the public records law and comply with the State's instructions on how to respond to the request. The contractor,

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

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

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

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

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

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

Exhibit B

SOUTHEAST WISCONSIN
HAZARDOUS MATERIALS
TASKFORCE

***WISCONSIN HAZARDOUS
MATERIALS RESPONSE SYSTEM***

BUDGET

LOCAL AGENCY MEMBERS:

CITY OF MILWAUKEE, WISCONSIN
CITY OF RACINE, WISCONSIN
CITY OF FOND DU LAC, WISCONSIN
BOLTONVILLE FIRE DEPT. WISCONSIN
SHEBOYGAN COUNTY, WISCONSIN

TEAM NAME	TEAM TYPE	BUDGET 7/01/21- 6/30/22	BUDGET 7/1/22 - 6/30/23
CITY OF MILWAUKEE	TYPE I	\$250,211.77	\$250,211.77
CITY OF RACINE	TYPE II	\$98,190.25	\$98,190.25
CITY OF FOND DU LAC	TYPE III	\$16,514.45	\$16,514.45
BOLTONVILLE FIRE DEPT.	TYPE III	\$16,514.45	\$16,514.45
SHEBOYGAN COUNTY	TYPE	\$16,514.45	\$16,514.45

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

Exhibit C

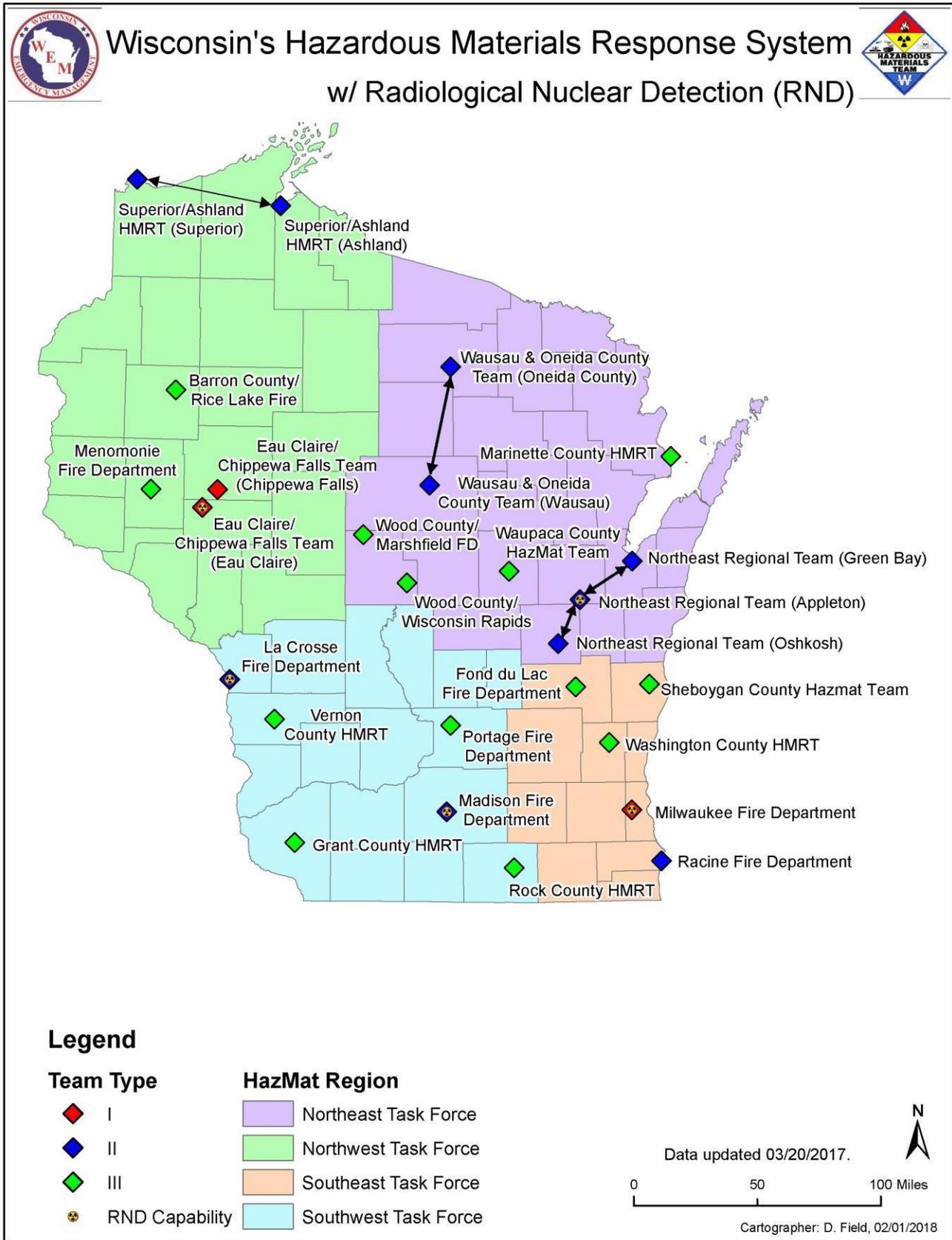


Exhibit D

MUNICIPAL CERTIFICATES OF INSURANCE