

**Contract between
State of Wisconsin, Department of Military Affairs,
Division of Emergency Management,
State of Wisconsin, Department of Health Services,
and the City of Appleton, Wisconsin
for Radiological Field Team Services**

THIS CONTRACT (“Contract”) is between the State of Wisconsin, Department of Military Affairs, Division of Emergency Management ("Division"), the State of Wisconsin, Department of Health Services (hereinafter “DHS”), and the City of Appleton, Wisconsin ("Contractor") for the provision by Contractor of Radiological Field Team Services.

WHEREAS, the State of Wisconsin, Department of Military Affairs, through its Division of Emergency Management, has statutory authority under Chapter 323 of the Wisconsin Statutes to provide emergency response planning.

WHEREAS, the Wisconsin Department of Health Services has statutory authority under Section 254.34 of the Wisconsin Statutes to develop comprehensive policies and programs for the evaluation and determination of hazards associated with the use of radiation, and for their amelioration, as well as to conduct studies, investigations, training, research, and demonstrations relating to the control of radiation hazards.

WHEREAS, the City of Appleton Fire Department is currently under contract with the Division as part of a regional emergency response team authorized under Wis. Stat. § 323.70.

WHEREAS, to protect life and property against the dangers of emergencies involving the release of radiation, the Division may assign and make available a regional emergency response team under contract as a designated radiological field team to the State Radiological Coordinator to survey and monitor the amount of radiation deposited following a release of radiation in a nuclear incident.

WHEREAS, the Division and DHS desire to enter into this Contract to establish the Contractor as a regional Radiological Field Team and Contractor desires to be so designated and to enter into this Contract.

HOWEVER, the parties expressly recognize and attest by this Contract 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 radiological or nuclear incident.

NOW THEREFORE, in consideration of the premises above, their mutual and dependent agreement, and the consideration provided below the parties agree as follows:

ARTICLE 1. CONTRACT TERM

This Contract shall continue for four (4) years commencing July 1, 2023 through June 30, 2027.

ARTICLE 2. DEFINITIONS

The following definitions are used throughout this Contract:

Disaster means a severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this State or a portion of this State, or critical systems, including computer, telecommunications, or agricultural systems.

Nuclear incident means any potential, sudden or non-sudden release of radioactive material, as defined under Wis. Stat. § 254.31 (9m), being stored or used in a nuclear facility, as defined under Wis. Stat. § 254.31 (4), or transported. "Nuclear incident" does not include any release of radiation from radioactive material being transported under routine operations.

Primary Response Area means the geographical region located in the State where the Contractor is principally responsible for providing radiological field team services.

Radiological agent means radiation or radioactive material at a level that is dangerous to humans, animals, plants, or other living organisms.

Radiological Field Team means the Contractor and/or designated employees of the Contractor who are expected to conduct a radiation and contamination survey, monitor, sample, and evaluate the actual or potential emergency release(s) of a radiological agent as well as participate in federally evaluated nuclear power plant exercises.

Radiological Field Team Services means the performance of primary radiation contamination surveys, monitoring, sampling, and evaluating an actual or potential emergency release(s) of a radiological agent under the direction of the State Radiological Coordinator and participating in annual federally-evaluated nuclear power plant emergency preparedness exercises as well as related pre-exercise drills.

Responsible Party means any person under Wis. Stat. § 895.065(1)(i).

State means the State of Wisconsin.

State Radiological Coordinator means the individual employed by DHS responsible for initiating any state level radiological response to a radiological incident/emergency, monitoring and evaluating the health impact of any radiological emergency including a nuclear power plant incident and recommending appropriate protective actions to protect the public and mitigate the impact on public health and safety.

ARTICLE 3. STATEMENT OF WORK

Services to be provided by Contractor: During the term of this Contract, Contractor agrees to provide Radiological Field Team Services within the boundaries of Contractor's assigned Primary Response Area and as requested by the Division and/or DHS. It is understood and agreed that the DHS is responsible to provide direction to and control of the radiological field team during radiological emergency preparedness drills and exercises, as well as real events.

Contractor shall not provide under this Contract any services with respect to the treatment, removal, remediation, recovery, packaging, transportation, movement; cleanup, storage and disposal of radioactive material except as these services may be reasonably necessary and incidental to preventing a release or threat of release of radioactive material or in stabilizing a nuclear incident, as determined by the DHS.

The Division, DHS, and Contractor make no representations to third parties with regard to the ultimate outcome of the provision of Radiological Field Team Services, but Contractor shall perform to the best of its abilities, subject to the terms of this Contract.

Personnel: Contractor shall provide an adequate number of trained, competent, and supervised personnel as established by DHS and as is reasonably necessary to operate within the safety levels of a radiological field team.

It is understood and agreed that response to a nuclear incident or training exercise will require 24-hour coverage for the length of the incident or training and will require four two-person teams per every 24-hour period. Each 12-hour period will be staffed by two two-person teams for a Contractor agrees to have a sufficient number of radiological field team personnel trained to ensure 24/7 availability for a radiological response.

Equipment: All necessary radiological equipment needed for Radiological Field Team Services will be provided by the DHS Radiation Protection Section. The Radiation Protection Section shall be responsible for the maintenance and calibration of the equipment. The equipment will be located with the Radiological Field Team. Contractor may use the radiological equipment under local authority or mutual aid agreements; however, Contractor agrees that in the event of nuclear incident response or training exercise, use of the equipment to respond to a nuclear incident shall have priority.

Use of State Vehicles: Only those Radiological Field Team members who (1) meet the eligibility criteria for driving a State of Wisconsin vehicle and (2) have an approved vehicle use agreement in place prior to operating a State vehicle may operate State vehicles during training, drills, exercises or real events or to perform any other service authorized under this Contract. Contractor should contact the DHS State Radiological Coordinator to obtain the eligibility criteria and start the vehicle operation approval process.

Under no circumstances may any Radiological Field Team member operate a State vehicle for any reason other than to perform services pursuant to this Contract or permit an individual who has not been approved to operate a State vehicle to do so.

Personal use of State vehicles is prohibited.

The driving records of all approved drivers are vetted on a monthly basis. A driver who does not continue to meet the eligibility criteria may not operate a State vehicle.

This use is subject to the Fleet Policies and Procedures of Central Fleet with the Division of Enterprise Operations with the Wisconsin Department of Administration.

Procedures and Limitations: Contractor recognizes that its obligations under this Contract are paramount to the State. 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 to ensure that Contractor is able to provide Radiological Field Team Services when requested.

ARTICLE 4. TRAINING AND CERTIFICATION

The DHS is responsible for providing periodic training to the Radiological Field Teams. Specifically, the DHS Radiation Protection Section will provide periodic training opportunities to ensure that all Radiological Field Team personnel receive necessary training and certification. Contractor agrees and understands that all Radiological Field Team personnel shall attend necessary field team training and refresher training to ensure certification for radiological field team response. Any Radiological Field Team personnel who have not attended or completed the required training will not be allowed to participate in a scheduled exercise. Radiological Field Team personnel shall also keep current any State required certifications.

ARTICLE 5. PAYMENT FOR SERVICES

Financial Consideration:

Contractor will be paid annually for the term of this Contract the sum of twenty four thousand nine hundred ninety-nine dollars (\$24,999.00) for the above-described activities. The initial payment will be made within 30 days following the execution of this Contract by all the parties and all subsequent payments within three weeks following the beginning of each new year for the term of the Contract.

Retirement System Status and Tax Payments: Contractor and its employees are not entitled under this Contract to Public Employees Retirement Withholding System benefit(s) contributions by the Division, DHS or any State agency. Contractor shall be responsible for payment/withholding of any applicable federal, Social Security and State taxes for its employees who are Radiological Field Team members.

ARTICLE 6. LIABILITY AND INDEMNITY

Scope: During radiological field team operations and associated training authorized by this Contract, Contractor and Radiological Field Team members are agents of the DHS for purposes of Wis. Stat. § 895.46(1). For purposes of this Article, operations means activities, including travel, that are directly related to performing Radiological Field Team Services under the direction of the State Radiological Coordinator and participation in annual federally-evaluated, nuclear power plant emergency preparedness exercises. Operations also include advanced training activities provided under this contract to the members of the radiological field team, but it does not include travel to and from the training.

Contractor Indemnification of State: When acting as other than an agent of DHS under this Contract and using the State's, Division's or DHS' equipment or vehicles, the Contractor shall indemnify, defend and hold harmless the State, Division, DHS, its officers, 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.

Accrued Obligations and Liabilities:

Any termination of the Contract shall be without prejudice to any obligations or liabilities of any party already accrued prior to termination, subject to the provisions of Article 7.

ARTICLE 7. RECORDKEEPING AND RECORD RETENTION

The Contractor shall establish and maintain adequate records of all expenditures incurred under the Contract. 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, DHS, 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 Contract held by Contractor. The Contractor shall retain all documents applicable to the Contract for a period of not less than six (6) years after the final payment is made or longer where required by law.

ARTICLE 8. TERMINATION OF CONTRACT

The Division, DHS, and/or Contractor may terminate this Contract at any time **for cause** by delivering thirty (30) days written notice to the other parties

Contractor may terminate this Contract **at will** by delivering ninety (90) days written notice to the Division and DHS.

The Division or DHS may terminate this Contract **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 payments required under the terms of this Contract; provided,

however, that the Contract may be modified to accommodate a reduction or increase in funds if mutually agreed to in writing.

(2) If federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that the Radiological Field Team Services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments under this Contract.

(3) If any license or certification required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

Upon termination of the Contract for any reason, the Division and DHS have no obligation to make any further payment under the Contract. For example, if the Contract is terminated in year two, then the Division and DHS have no obligation to make any payment for years three and four.

Upon termination of the Contract for any reason, Contractor will refund to the Division within sixty (60) days of the termination payments made 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.

Insufficient Funds: The obligation of the Contractor under this Contract is contingent upon the availability of funds to the Division and the allotment of funds to Contractor. Contractor may, upon thirty (30) days prior written notice, terminate this contract if funds are not available.

ARTICLE 9. APPLICABLE LAW

This Contract 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, ordinances, rules and regulations in effect during the period of this Contract and which may in any manner affect the provision of Radiological Field Team Services or participation in training.

ARTICLE 10. 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.

ARTICLE 11. SUCCESSORS IN INTEREST

The provisions of the Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective permitted successors and assigns.

ARTICLE 12. 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. All notices to be given under the terms of this contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid or hand delivered to the addresses of the parties. Such notices or reports shall be directed to:

For the Division of Emergency Management:

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

For the Department of Health Services:

ATTN: Administrator
Division of Public Health
Department of Health Services
PO Box 2659
Madison, WI 53701-2659
Telephone #: (608) 266-1251
FAX #: (608) 267-2832

For the City of Appleton:

Chief Jeremy Hansen
Appleton Fire Department
700 N. Drew Street
Appleton, WI 54911
Telephone #: (920) 832-5810

ARTICLE 13. SEVERABILITY

If any provision of this Contract 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 Contract did not contain the particular provision held to be invalid.

ARTICLE 14. AMENDMENTS

The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of Division, DHS, and Contractor.

ARTICLE 15. 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.

ARTICLE 16. 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, DHS, 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, DHS, 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.

ARTICLE 17. CONSTRUCTION OF CONTRACT

This Contract is intended to be solely between the parties hereto. No part of the Contract 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.

ARTICLE 18. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed the original, and all of which together shall constitute one and the same instrument.

ARTICLE 19.

This Contract constitutes the entire agreement between the Division, DHS and Contractor with respect to the subject matter of this Contract and supersedes all prior discussions, negotiations, and agreements, written or oral, with respect to such subject matter.

Approving Signatures:

ON BEHALF OF THE DIVISION OF EMERGENCY MANAGEMENT (DIVISION)

Dated this ___ day of _____, 2023

Greg Engle, Division Administrator

ON BEHALF OF THE DEPARTMENT OF HEALTH SERVICES

Dated this ___ day of _____ 2023

Division of Public Health

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

Agreement: Contract for Radiological Field Team Services

Date: _____

By: _____
Jake Woodford, Mayor

Attest: **Kami Lynch, City Clerk**

Approved as to form:

Christopher Behrens, City Attorney

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

Jeri A. Ohman – Finance Director

On behalf of the Appleton Fire Department

Jeremy Hansen, Fire Chief