

CONTRACT FOR HAZARDOUS MATERIALS **EMERGENCY RESPONSE TEAMS**

1.0 Recitals

This Agreement is between the State of Kansas Office of the State Fire Marshal (KSFM), 700 Southwest Jackson Street, Topeka, Kansas, and the City of Overland Park, Kansas (Contractor), 8500 Santa Fe, Overland Park, Kansas for the purpose of providing hazardous materials emergency response services authorized by K.S.A. 31-133 and described herein.

1.1 Contract Term

This Agreement shall be in force and effect from the ____ day of _____, _____ through and including the ____ day of _____, _____, a period of one year with automatic one-year renewals thereafter unless terminated pursuant to Section 17.0.

2.0 Definitions

2.1.1 Administrative costs mean those administrative expenses incurred by the Contractor to maintain incident readiness and to respond to an Authorized hazardous materials incident as the Emergency response team.

2.1.2 Agreement means this contract together with the following exhibits which are attached hereto and incorporated by reference herein:

- A. Exhibit 1 Regional Map
- B. Exhibit 2 Notice to Proceed Checklist
- C. Exhibit 3 Vehicle Reimbursement Schedule
- D. Exhibit 4 Administrative Costs
- E. Exhibit 5 Standard Operating Guidelines

2.1.3 Authorized hazmat incident means a hazardous material (hazmat) incident or emergency that the Emergency response team has been authorized to respond to by the KSFM, the director of the hazardous materials division, or the state fire marshal's designee, pursuant to a tiered response system or an emergency response meeting the guidelines for a tiered response. It includes a response by the Emergency response team to the same incident or emergency within 48 hours of leaving the scene. It does not include a local response, except if authorized by the KSFM or Hazmat director.

2.1.4 Chemical assessment team means either (1) a type of Emergency response team whose primary objective is the assessment of chemical hazards; or, (2) those members of a Hazardous materials response team whose primary objective is the assessment of chemical hazards.

2.1.5 C.F.R. means the Code of Federal Regulations.

2.1.6 Cleanup means the measures taken after the hazardous materials emergency to permanently remove a hazard from the incident after a spill or leak has been contained.

2.1.7 Emergency response team means a Hazardous materials response team or Chemical assessment team comprised of certified technician level hazmat responders under contract with the KSFM through this Agreement to provide response to Hazardous materials emergencies in accordance with the provisions of this Agreement.

2.1.8 Hazardous material or Hazmat means any material defined as a hazardous substance under 29 C.F.R. § 1910.120 (a)(3).

2.1.9 Hazardous materials emergency response fund means the fund established pursuant to K.S.A. 31-133 for the purpose of funding hazardous materials operations through the KSFM division of hazardous materials.

2.1.10 Hazardous materials response team means a team whose primary responsibility is to respond to Hazardous materials incidents with full capabilities to control or mitigate the situation in order to protect life and property from the Hazardous materials incident.

2.1.11 Hazardous materials incident, Hazardous materials emergency or Hazmat incident means an uncontrolled release, or threatened release of a hazardous substance requiring outside assistance by a local fire department or Emergency response team to accomplish containment and control.

2.1.12 Hazardous materials response or Hazmat response is a response by an Emergency response team to an Authorized hazardous materials incident.

2.1.13 Hazmat director means the director of the KSFM's division of hazardous materials or the director's authorized designee.

2.1.14 N.F.P.A. means the national fire protection association.

2.1.15 Pre-approved training opportunity means training provided by the KSFM or training provided by any other organization approved by the KSFM or Hazmat director prior to attendance.

2.1.16 Primary response area means that geographical area where Contractor is principally responsible for providing regional hazardous material Emergency response services.

2.1.17 Replacement personnel costs mean those Contractor expenses for personnel who are called in to replace emergency response team personnel attending pre-approved training or providing emergency response services for an Authorized hazmat incident.

2.1.18 State means the KSFM acting through the State Fire Marshal, the Hazmat director or their designee.

2.1.19 Technician level entry capability means the capacity of an Emergency response team to meet the training and equipment requirements and to maintain technician level certification standards as defined in N.F.P.A. 472 and 29 C.F.R. 1910.120, to respond to a Hazardous materials incident requiring affirmative measures such as patching, plugging, or other action necessary to stop and contain the release of a hazardous substance at its source.

3.0 Services to be provided by Contractor

During the term of this Agreement, the Contractor agrees to provide Emergency response team services within the boundary of the Contractor's assigned Primary response areas as defined by Exhibit 1 and outside the assigned area at the written or oral request of KSFM, the Hazmat director or the fire marshal's designee. Outside the assigned area includes a response out of the State of Kansas pursuant to any emergency assistance compact entered into by the State.

Contractor is hereby designated as Emergency response team number _____.

Contractor's response activities under this Agreement shall be limited to emergency operations, reporting and documentation activities arising from Authorized hazmat incidents which threaten life or property.

Contractor shall not be responsible under this Agreement for providing any services with respect to sampling, testing and analysis, treatment, removal, remediation, recovery, packaging, monitoring, transportation, movement of Hazardous materials, Cleanup, storage and disposal of Hazardous materials except as these services may be reasonably necessary and incidental to preventing the release or threat of release of Hazardous materials or in stabilizing the Hazardous materials incident.

Contractor shall not be required to maintain general security and/or safety perimeters at or near sites, locate underground utilities, ensure appropriate traffic control services, conduct hydrological investigations or analysis, or provide testing, removal or disposal of underground storage tanks at or near the Authorized hazmat incident to which the Contractor is assigned.

Contractor makes no representations or warranties of any kind to third parties with regard to the ultimate outcome of the Hazardous materials services to be provided, but shall respond to the best of its abilities, subject to the terms of this Agreement.

3.1.1 Performance Conditions

Prior to undertaking any Hazardous materials assignment under this Agreement, Contractor must first receive written approval from the KSFM, the Hazmat director or the state fire marshal's designee to proceed with response activities in accordance with the "Notice to Proceed Checklist" attached as Exhibit 2 to this document. KSFM approval shall be conditioned upon the Contractor demonstrating to the KSFM that the Contractor's employees, equipment and vehicles meet or exceed applicable state and federal laws and regulations. Contractor may not respond to Hazardous materials incidents under this Agreement until all required signatures have been obtained and the State has issued a written "Notice to Proceed" to Contractor. Contractor shall not respond to Authorized hazmat incidents under this Agreement until its personnel meet the training requirements set forth in Exhibit 5, Standard Operating Guideline #05, "Training Standards and Guidelines".

3.1.2 Personnel

Contractor shall maintain sufficient numbers of trained, medically monitored, competent and supervised personnel capable of responding immediately with a minimum of three (3) persons for a Chemical assessment team and four (4) persons for a Hazardous materials response team. These immediately available personnel must be capable of responding twenty-four (24) hours per day, three hundred sixty five (365) days per year, three hundred sixty six (366) days if leap year. Contractor shall respond with personnel who are capable of providing emergency response to Authorized hazmat incidents requiring Technician-level entry capability. Contractor shall limit its response team activity to those measures within the level of training and capability of those on the scene of the incident. The obligation to provide personnel pursuant to this section is subject to Contractor's budget limitations consistent with Kansas Cash Basis laws.

Chemical assessment team personnel will provide reconnaissance and evaluation of scene needs. If the incident is within the capabilities of the Chemical assessment team, this team may deal with the situation. If the incident is beyond the capabilities of the team, the team shall call the Hazardous materials response team to deal with the incident. The Chemical assessment team shall remain on scene to assist the Hazardous materials response team.

A Hazardous materials response team or Chemical assessment team may be composed of members of more than one entity. The Contractor will submit billing for all team expenses regardless of composition of the team members.

3.1.3 Vehicles and Equipment

Contractor shall provide and maintain vehicles and equipment for use by the Emergency response team during the Authorized hazmat incident response. Contractor shall provide

physical facilities suitable for use by the Emergency response team, and for storage of such vehicles and equipment used by the Emergency response team in responding to Authorized hazmat incidents. Contractors applying for equipment from KSFM program funds must submit an item description and cost estimate to KSFM for evaluation and approval before funds will be allocated.

Contractor shall be responsible for insurance maintenance and all other costs associated with maintaining vehicles and equipment in a safe and suitable condition for use during an Authorized hazmat incident response.

In addition, Contractor shall operationally test communications gear and maintain this equipment in accordance with the manufacturers' recommendations. Contractor shall also maintain protective clothing, self-contained breathing apparatus, and all other equipment in a serviceable condition and in accordance with manufacturer's recommendations.

Contractor is responsible for all costs incurred in responding to an Authorized hazmat incident, subject to the reimbursement of certain costs and expenses as set forth in section 3.2 of this Agreement.

3.1.4 Response Procedure

Contractor's obligation to provide Emergency response team services arises when dispatched by the KSFM, the Hazmat director or the state fire marshal's designee in accordance with a request for assistance of an Emergency response team. Contractor's obligation also arises when a request for the assistance of an Emergency response team meets the immediate incident dispatch criteria set forth in Exhibit 5, Standard Operating Guideline #02.

If a request for assistance does not satisfy the criteria for immediate incident dispatch, Contractor shall contact the KSFM, Hazmat director or designee for approval to respond. Contractor shall dispatch the Emergency response team to the incident only after receiving such approval. Response by the Contractor to incidents not authorized by the KSFM, the Hazmat director or the state fire marshal's designee shall not be compensated under the provisions of this Agreement.

3.1.5 Right of Refusal

Contractor agrees to respond to all requests for response services by the KSFM, the Hazmat director or the state fire marshal's designee except when the Contractor's resources are committed to an emergency in its own jurisdiction or committed to an emergency in another jurisdiction pursuant to existing interlocal agreements, or conditions in Contractor's fire protection area are such that adequate fire protection cannot be supplied. In that event, the local response and concerns shall have priority. The Contractor shall immediately inform the KSFM, the Hazmat director or the state fire marshal's designee of its unavailability in the event a request for response service to the

Contractor is made under this Agreement. When the Contractor's resources are no longer committed and become available to respond to an Authorized hazmat incident, the Contractor shall notify the KSFM, the Hazmat director or the state fire marshal's designee of its return to available status. Within twenty-four (24) hours following the conclusion of the local situation which made the Contractor unavailable to respond to an Authorized hazmat incident, the Contractor shall submit written documentation of the circumstances constituting its unavailability to KSFM.

A Contractor shall provide Hazmat response services outside its Primary response area upon request of the KSFM, the Hazmat director or the state fire marshal's designee. Outside of the Primary response area includes a response out of the State of Kansas pursuant to any emergency assistance compact entered into by the State.

3.1.6 Standard Operating Guidelines

The standard operating guidelines Attached hereto as Exhibit 5 assist with the understanding and implementation of this Agreement. Standard operating guidelines for use on scene during a response shall be developed by, and for the use of, the individual Hazardous materials response teams and/or Chemical assessment teams.

3.2 Contractor Compensation

3.2.1 Personnel Costs

KSFM agrees to reimburse Contractor for the normal salaries and overtime costs at the current rate of Emergency response team personnel providing emergency response services for an Authorized hazmat incident. KSFM also agrees to reimburse Contractor for Replacement personnel costs. These costs are submitted by mail or fax within thirty (30) days following the response or training on the form provided. Forms are included in Standard Operating Guidelines attached hereto in Exhibit 5.

Contractor shall take reasonable action to minimize any overtime costs incurred when Emergency response team personnel attend a Pre-approved training opportunity.

3.2.2 Vehicles and Equipment

KSFM agrees to reimburse Contractor for the use of vehicles and equipment utilized by Contractor in responding to an Authorized hazmat incident. Reimbursement for the use of vehicles and equipment shall be in accordance with the vehicle reimbursement schedule attached hereto as Exhibit 3.

If Contractor responds to the same Authorized hazmat incident within forty-eight (48) hours of leaving the scene, the additional responses shall not warrant the first hour rate for equipment. All other hourly rates for personnel and equipment shall apply.

Any initial response under one hour, even if units are recalled before or after arriving on scene, will be eligible for the initial first hour reimbursement.

3.2.3 Replacement of Damaged Equipment and Disposable Materials

KSFM agrees to reimburse Contractor for equipment damaged or disposable materials used during a response to an Authorized hazmat incident. KSFM reserves the right to reimburse Contractor either through monetary compensation or by providing comparable equipment and disposable materials to Contractor.

If the request for replacement is for equipment not directly related to entry or decontamination procedures, the KSFM, the Hazmat director or the state fire marshal's designee may request the testing and maintenance logs for the damaged equipment, as well as a written report by the incident commander as to what happened.

3.2.4 Administrative Costs

KSFM agrees to reimburse Contractor for Administrative costs incurred in responding to an Authorized hazmat incident as set out in Exhibit 4. Examples of administrative costs are included in Exhibit 4. Administrative costs will be reimbursed with each incident's cost reimbursement.

3.2.5 Training

KSFM shall reimburse Contractor for certain expenses associated with attendance by current or proposed Emergency response team members at Pre-approved training opportunities. KSFM shall reimburse Contractor for mileage, meals, hotel and any registration or tuition expenses. Reimbursement for mileage, meals and hotel shall be in accordance with the relevant provisions of K.A.R. Chapter 1, Article 16 and amendments thereto. KSFM also agrees to reimburse Contractor for Replacement personnel costs. These personnel costs shall be limited to actual cost for personnel services.

All requests for training shall be submitted in writing to the KSFM, the Hazmat director, or the state fire marshal's designee on the provided form. Confirmation of the class will be communicated to the requesting agency by phone and in writing.

3.2.6 Medical Surveillance

Contractor shall be responsible for administering medical surveillance. As a minimum, baseline physicals should include a hands-on examination by physician or nurse practitioner, wellness screen (blood work), urinalysis, pseudocholinesterase, pulmonary function and E.K.G.

The entity requesting physicals must supply physicians with the duties and operations the employee will be expected to perform.

3.2.7 Workers Compensation

An Emergency response team's members shall remain under the workers compensation coverage being provided by the current employer. KSFM will reimburse the current employer a portion of the premiums for that coverage, not more than five percent the first year and based on experience level thereafter.

3.2.8 Billing and Cooperation

The Contractor shall provide a written itemized bill to the KSFM for all reimbursable expenses incurred in connection with Hazmat response or training activities within fourteen (14) days following completion of the Authorized hazmat incident response or other activity. The Contractor's claim for reimbursement shall contain complete documentation. Contractor shall cooperate fully with any audit or verification process in connection with billed costs and in connection with KSFM's cost recovery efforts against the party or parties responsible for the Hazmat incident.

State funds for Emergency response teams must be used to supplement existing funds for program activities and may not replace (supplant) local funds already appropriated for the same purpose. Potential supplanting will be the subject of monitoring and audit. Violations can result in suspension of future funds under this program.

3.2.9 Prior Approval

Contractor will be reimbursed only for reimbursable costs incurred in connection with a response to an Authorized hazmat incident and Pre-approved training opportunity. Authorization or pre-approval by the KSFM, the Hazmat director or state fire marshal's designee shall constitute agreement to pay Contractor's reimbursable costs in accordance with this Agreement. Contractor agrees to make reasonable good faith efforts to minimize reimbursable expenses.

4.0 Hazardous Materials Emergency Response Fund

KSFM shall reimburse Contractor from the Hazardous materials emergency response fund. If the fund becomes depleted or appears to be insufficient to satisfy expected claims, the KSFM shall immediately notify the Contractor by phone and in writing of this fact. Upon receiving notice of the funds depletion or insufficiency, the Contractor may suspend response actions under this Agreement.

The Contractor shall be reimbursed for any unpaid costs as funds become available, but no reimbursements shall be made from funds other than the Hazardous materials emergency response fund. If a Contractor commences a response after receiving notice that the fund is depleted or potentially insufficient, the Contractor assumes the risk of non-payment if the KSFM is unable to secure additional funds.

5.0 Assignments and Subcontracting

Contractor agrees not to assign, sell, transfer, subcontract or otherwise delegate its rights or responsibilities under this Agreement, unless approved in writing in advance by KSFM.

6.0 Successors in Interest

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to the Agreement and their respective successors.

7.0 Compliance Standards

Contractor agrees to substantially comply with all applicable federal, state, and local statutes and regulations and with duly adopted and applicable N.F.P.A. standards, or codes in relation to this Agreement. Failure to comply shall constitute a breach of this Agreement.

8.0 Acts of God

Neither party shall be responsible for delay or default caused by fire, riots, acts of God and/or war which are beyond the party's reasonable control.

9.0 State Tort Claims Act

Upon commencing and while engaged in an Authorized hazmat incident response or while participating in a Pre-approved training opportunity pursuant to this Agreement, Contractor and members of the Emergency response team employed by the City of Overland Park are subject to the provisions of K.S.A. 75-6101 et seq. This Agreement does not in any way waive any sovereign or governmental immunity of the KSFM, the State of Kansas or the Contractor.

Contractor shall immediately give notice in writing to the KSFM of any demand, request, or occurrence that may reasonably give rise to a claim against the Contractor or the KSFM or State of Kansas for work done pursuant to this Agreement. Contractor shall follow the procedural requirements for notice and all other provisions of the tort claims act, K.S.A. 75-6101 et seq.

10.0 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; and 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.

11.0 Access to Records

Each party to this Agreement and their duly authorized representative shall have access to the other party's books, documents, investigative reports, and accounts which are directly pertinent to this Agreement for the purpose of making financial, maintenance, or regulatory audits. Records shall be maintained for at least five years.

12.0 Confidentiality

Each party agrees that except as otherwise required by law, they shall not disclose each other's confidential information to a third party without the written consent of the party sharing the information. The rights and obligations set forth herein shall survive termination of the Agreement. Any duty under this sub-section shall be subject to and interpreted consistently with the Kansas Open Records Act, K.S.A. 45-201 et seq. and other provisions of law. Contractor agrees that disclosure of investigative or on scene records or information shall be made only in conformance with the Kansas Open Records Act, the Kansas Arson Reporting and Immunity Act, and the KSFM written policies and practices relating to public disclosures attached and made part of this contract.

13.0 Amendments

The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever without the prior written approval of both the KSFM and the Contractor.

14.0 Payment of Obligations

Contractor agrees to make payment promptly as due to all persons furnishing services, equipment or supplies to Contractor for the performance of this Agreement. If Contractor fails, neglects, or refuses to pay any such claims as they become due and for which the KSFM or State of Kansas may be held liable, the KSFM, after determining that the claim is just, due, and payable, may, but is not required to, pay the claim and charge the amount of the payment against funds due the Contractor under this Agreement. The payment of such a claim by KSFM shall not relieve the Contractor of any duty with respect to any unpaid claims.

15.0 Dual Payment

Contractor shall not be compensated for any work performed under this Agreement including but not limited to any response or training activity, by any other public or private agency or entity, except as authorized by and provided for in this Agreement.

16.0 Remedies

This Agreement shall be governed by and construed in accord with the law of the State of Kansas.

17.0 Termination

This Agreement may be terminated by mutual consent of both parties or by either party upon thirty (30) days advance notice in writing. This Agreement may be terminated at will effective upon delivery of written notice to the KSFM or Contractor by either party under the following conditions: (1) funding from federal, state, or other sources is not obtained or continued at levels insufficient to cover costs; (2) changes in federal, state, or other applicable law, including court decisions, substantially changing the relationship or terms of the agreement; (3) any license or certification Contractor is required to obtain and/or maintain is revoked, suspended or otherwise becomes ineffective.

Any equipment, including vehicles, printed materials, tools and any other items purchased with funds from the KSFM hazardous materials response program (excluding any reimbursement materials or equipment) shall revert to the KSFM program in the event that the host entity defaults in contract performance or elects to no longer participate in the program.

The KSFM and Contractor may terminate performance of work under this Agreement in whole or in part whenever, for any reason, the parties determine that the termination is in their best interest. In the event that either party elects to terminate this Agreement pursuant to this provision, it shall provide the other party written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The parties shall continue to perform any part of the work that may have not been terminated by the notice.

18.0 Default

KSFM or Contractor may terminate the whole or part of any of this Agreement if: (1) the other party substantially fails to provide the services called for by the Agreement; or (2) the other party substantially fails to perform any other provision of the Agreement. Prior to termination, KSFM or Contractor must provide written notice of default, including breach of Agreement and provision of Agreement allegedly to have been breached, and allow at least ten (10) days for the other party to correct such failures. The other party must correct such failures within ten (10) days, or such longer period as the notice may authorize, of receipt of the notice of default.

19.0 Provisions

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this Agreement and made a part thereof.

20.0 Approvals

Contractor's representatives certify by their signature herein that they have the necessary and lawful authority to enter into this Agreement and to bind the contracting entity to this Agreement.

21.0 Kansas Act Against Discrimination

The Contractor and KSFM agree that:

1. they shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, color, religion, age, disability, sex, ancestry, national origin or veteran status.
2. in all solicitations or advertisements for employees, they shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. if either party fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, they shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
4. if either party is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, they shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
5. they shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by Contractor or KSFM:

- (a) contracting party employs fewer than four employees during the term of such contract; or
- (b) contract with the parties cumulatively total \$5,000 or less during the fiscal year.

The parties further agrees that they shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provision in the Americans

With Disabilities Act (42 U.S.C. 1201 *et seq.*) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

Entered into this _____ day of _____, 2003.

Joseph P. Odle

State Fire Marshal

Ed Eilert, Mayor

City of Overland Park, Kansas

Date

Date