

FIRE DEPARTMENT

130 W. ST. PAUL AVENUE
WAUKESHA, WISCONSIN 53188-5172
TELEPHONE 262/524-3651 FAX 262/524-3670

September 25, 2014

Ald. Joe Pieper, Chair
City of Waukesha Finance Committee
1011 West Glenn Drive
Waukesha, WI 53188

Regarding: Approval of Revised Contract with Waukesha County for
Providing Emergency Response to Hazardous Materials Incidents

Dear Ald. Pieper,

The City of Waukesha has had a contract/intergovernmental agreement with Waukesha County to provide Emergency Response to Hazardous Materials incidents/spills in Waukesha County since 2004. The current contract language and compensation has not changed since its inception. In the spring, we were notified by Waukesha County of their desire to renegotiate the contract due to changes in the state of Wisconsin's compensation for state teams. As a result, our existing contract has been reviewed by a subcommittee of the Local Emergency Planning Commission (LEPC) and legal counsel for both Waukesha County and the City of Waukesha. The attached contract is a result of a lengthy review process. The following are highlights of the major changes being proposed:

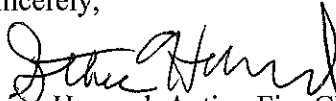
- Compensation for providing services has been reduced from \$144,000 to \$95,200 annually and is based on funding formulas for the State of Wisconsin regional teams. We will be compensated at an average of comparable departments as part of the State of Wisconsin's response network.
- The existing contract (\$144,000) includes an annual "County HazMat Grant" that provides the department with approximately \$9,000-\$10,000, per year, to be spent on equipment for the HazMat team, meeting State grant requirements. These funds will no longer be included in the annual compensation, and would be awarded to the department separately.
- The existing contract requires the City of Waukesha to take on all financial responsibilities for expenses related to spills occurring within the boundaries of the City of Waukesha, while pursuing payment from the responsible party. Spills occurring outside of the City of Waukesha are reimbursed by Waukesha County, while the County pursues payment from the responsible party. Ultimately, if a responsible party is not identified or able to pay, the County reimburses the City of Waukesha for all expenses associated with our response. The proposed contract removes financial responsibilities from the City of Waukesha, consistent with the rest of the County.
- The proposed contract includes substantial wording changes reflecting current terms, laws, and regulations, and also updated signatures and dates. None of these changes directly impact our obligations or responsibilities; they only reflect current standards.



The City of Waukesha and Waukesha County have had a successful, long-standing agreement designating the City of Waukesha Fire Department as the County's Hazardous Material Emergency Response Team. During our discussions regarding the contract, representatives of Waukesha County stressed their satisfaction with the services that we have provided over the past ten (10) years. The request for revisions was based on a need to update language and compensation due to changes at the State level.

I will be present during the meeting to answer any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Howard", is written over the typed name.

Steve Howard, Acting Fire Chief
City of Waukesha

Copies: Mayor Shawn Reilly
Ed Henschel, City Administrator
Rich Abbott, Finance Manager
William Stolte, Waukesha County Emergency Manager

Attachments (2) – Proposed Contract & Matrix (Exhibit A)

1 **HAZARDOUS MATERIALS EMERGENCY RESPONSE AGREEMENT**

2
3 **WAUKESHA COUNTY/CITY OF WAUKESHA**

4
5 This Agreement is entered into pursuant to Sec. 66.0301(2) and 323.61(2m), Wis.
6 Stats., on January 1, 2015, between the City of Waukesha, a Wisconsin Municipal
7 Corporation ("City"), and Waukesha County, a Wisconsin County ("County") as follows:

8
9 WHEREAS, the National Incident Management System (NIMS) established standards
10 for three levels of hazardous materials emergency response capabilities (defined as
11 Types 1, 2, and 3); and

12
13 WHEREAS, the State of Wisconsin implemented the Wisconsin Hazardous Materials
14 Response System in 2013 establishing a network of Type 1, 2, and 3 hazardous
15 materials response teams across the State consistent with the NIMS standards; and

16
17 WHEREAS, multiple transportation routes for hazardous materials traverse Waukesha
18 County;

19
20 WHEREAS, numerous facilities exist using, storing, or manufacturing hazardous
21 materials in Waukesha County; and

22
23 WHEREAS, the City and County of Waukesha worked jointly to develop and enhance
24 an effective hazardous materials emergency response capability similar to the
25 capabilities listed in the National Incident Management System ("NIMS") Resource
26 Typing standard for a Type 2 Hazardous Materials Entry Team; and

27
28 WHEREAS, the development of the response capability involved the writing of standard
29 operating and response guidelines and the purchase of thousands of dollars of
30 response equipment and supplies, as well as large investments in the training of
31 personnel to United States Department of Labor, Occupational Safety and Health
32 Administration ("OSHA") 29 CFR 1910.120 standards; and

33
34 WHEREAS, the City of Waukesha Fire Department maintains personnel trained to the
35 technician level and to the incident commander level as defined under OSHA 29 CFR
36 1910.120; and

37
38 WHEREAS, OSHA 29 CFR 1910.120, Appendix B defines four levels of personal
39 protective equipment capabilities; and

40
41 WHEREAS, the City of Waukesha Fire Department maintains an inventory of personal
42 protective equipment consistent with Level B capabilities as defined in OSHA 29 CFR
43 1910.120 Appendix B and an inventory of emergency response equipment as identified
44 in Exhibit B (updated annually in coordination with the Local Emergency Planning
45 Committee {"LEPC"}); and

WHEREAS, Section 323.61(2m) Wis. Stats. establishes that the Local Emergency Planning Committee ("LEPC") must identify a county hazardous materials emergency response team that is capable of responding to Level B hazardous materials releases that occur or potentially occur at any place in the county and whose members meet the standards for hazardous materials technicians as established in OSHA 29 CFR 1910.210(q)(6)(iii) in order to remain eligible for emergency response equipment grant funding; and

WHEREAS, the City of Waukesha Fire Department's Hazardous Materials Response Team meets the training standards as described above and is prepared to provide an appropriate Level B response; and

WHEREAS, the LEPC recommended and the Waukesha County Board of Supervisors supports the continued designation of the City of Waukesha Fire Department as the Waukesha County Level B Hazardous Materials Emergency Response Team; and

WHEREAS, the Common Council of the City of Waukesha supports the continued designation of the City of Waukesha Fire Department as the Waukesha County Level B Hazardous Materials Emergency Response Team; and

WHEREAS, in order to provide Level B response capability within the County of Waukesha, the City and County agree that the City will provide the County with the following level of service and support.

NOW THEREFORE, in consideration of the above, the County and City agree as follows:

A. DEFINITIONS: This Agreement specifically incorporates the definitions set forth in sec. 116.20(1), Wis. Stats., Chapter 323, Wis. Stats., 29 CFR 1910, and 42 USC Sec 11001-11050.

B. SERVICES TO BE PROVIDED BY THE CITY OF WAUKESHA FIRE DEPARTMENT

- 1) When Level B hazardous materials emergency response is requested by an official having jurisdictional authority within Waukesha County, the City shall provide a Level B emergency response within the County. The number of trained personnel of the City responding to such request shall be dependent upon the limitations on personnel and equipment of the City at the time of the request. Operational support of the hazardous materials emergency response team provided by the City in response to such request shall be the responsibility of the Authority Having Jurisdiction's (AHJ) incident commander. However, the City may recommend to the AHJ that they request support from the Wisconsin Hazardous Materials Response System as necessary for effective response.

- 93 2) The City shall provide a Level B emergency response within the County in
94 accordance with the standard operating guidelines as specified in the
95 Waukesha County Comprehensive Emergency Response Plan ("CERP"),
96 which is incorporated herein by reference. The City shall provide the County
97 with capability, inventory, and hazardous materials team membership
98 information as requested or required by the State of Wisconsin to maintain
99 grant eligibility.
100
- 101 3) In the event of a Level B emergency response within Waukesha County,
102 including within the City of Waukesha, the City shall, within thirty days,
103 itemize its actual, reasonable and necessary expenses associated with the
104 response, based upon the reimbursement guidelines set forth in the
105 Waukesha County Comprehensive Emergency Response Plan ("CERP"), and
106 forward the invoice to the Waukesha County Emergency Management
107 Coordinator for processing through the Local Emergency Planning Committee
108 ("LEPC") to the responsible party(ies). Under all circumstances, the County
109 shall be responsible for pursuing reimbursement of these expenses from the
110 responsible parties. If after ninety (90) days following receipt of the City's
111 invoice, payment is not received from the responsible party(ies) through the
112 LEPC, then the County shall reimburse the City for the City's actual,
113 reasonable and necessary expenses associated with the response. No
114 interest shall be accrued during the 90 days following receipt of the invoice by
115 the County while the County pursues reimbursement from the responsible
116 party(ies).
117
- 118 4) The City shall provide in connection with such a requested response, to the
119 extent of its resource capability, all tools and equipment necessary to attempt
120 to identify, confine and control the hazardous material whether it is released
121 or has potential for release into the environment. The requesting jurisdiction
122 shall handle standard hydrocarbon situations. The City makes no
123 representation to third parties with regard to the ultimate outcome of the
124 hazardous materials service to be provided, but the City will respond to the
125 best of its ability.
126
- 127 5) Whenever a Level B Hazardous Material Emergency Response is requested,
128 the City shall contact and notify the Waukesha County Emergency
129 Management Coordinator as soon as practical.
130
- 131 6) The Waukesha County Office of Emergency Management shall continue to
132 carry out its responsibility in accordance with the Superfund Amendments and
133 Reauthorization Act ("SARA") of 1986, Emergency Planning and Community
134 Right to Know Act ("EPCRA") and Chapter 323, Wis. Stats.
135
- 136 7) In the event of multiple simultaneous hazardous materials emergency
137 responses within the County, the City reserves the right to prioritize and
138 allocate resources.

- 139
- 140 8) The City of Waukesha Fire Department shall provide to the LEPC and County
- 141 Emergency Management Coordinator formal response reports regarding any
- 142 responses which the hazardous materials team makes within Waukesha
- 143 County.
- 144
- 145 9) The City's hazardous materials team supervisor shall participate in any post-
- 146 incident review as scheduled by the authority having jurisdiction over the
- 147 incident.
- 148
- 149 10) There shall be no liability for failure to respond effectively, or to respond in a
- 150 timely manner, to any hazardous materials release after a request is made
- 151 where road or other conditions or events beyond the control of the City as the
- 152 responding party, or firefighting or actual or potential emergency or other
- 153 needs or requirements exist within the territory of the City as the responding
- 154 party which impair or prevent an effective or timely response.
- 155

156 STANDARD RESPONSE PROCEDURES

157

158 The State of Wisconsin Hazardous Materials Response Matrix (as modified by

159 the City of Waukesha Fire Department) and attached hereto as Exhibit "A" and

160 incorporated herein, shall be used to determine the appropriate level of

161 hazardous material emergency response required for any incident in which the

162 City hazardous materials team is requested.

163

164 D. AGREEMENT TERM

165

166 This Agreement shall have a term of a period of five (5) years commencing

167 January 1, 2015 through December 31, 2020, and shall automatically renew

168 annually unless either party serves written notice as required herein. Prior to the

169 scheduled renewal, the parties agree to meet to review this Agreement to ensure

170 relevant needs of the County and City continue to be met hereunder. Upon

171 written notice by either party on or before June 1 of any agreement year, the

172 parties hereto agree to renegotiate in good faith the terms and conditions of this

173 Agreement.

174

175 E. COMPENSATION FOR HAZARDOUS MATERIALS SERVICE

176

177 For the services described above, Waukesha County shall make the following

178 payments to the City upon execution of this agreement:

179

- 180 1) The fee for providing Countywide Level B Hazardous Material emergency
- 181 response service for the term of this agreement shall be **\$95,200** annually,
- 182 exclusive of any annual State of Wisconsin EPCRA Computer and Hazardous
- 183 Material Equipment Grant funding that may become available. The County, in
- 184 conjunction with the City, shall prepare and submit the EPCRA Computer and

Hazardous Materials Grant application to further support development and continue the Level B response capability.

- 2) Costs associated with an actual response shall be invoiced by the County to the responsible parties as described in the Waukesha County CERP, Section VIII. Reimbursement to the City for costs of an actual response shall be paid in accordance with the provisions of Section (B)(3) of this Agreement.

F. INDEMNIFICATION AND HOLD HARMLESS

Each party shall indemnify, save and hold harmless the other party, its officers, employees, agents and representatives from any liability (including statutory liability and liability under worker's compensation or other occupational disease law), claim, action, loss, cost, damage, injury (including death), or expense, including but not limited to actual, reasonable and necessary attorney's fees, due to the negligence or other fault of its officers, employees, agents and representatives, arising out of or resulting from the rendering of services under this Agreement. The parties shall give to each other prompt and reasonable written notice of any such claims or actions and the other party shall have the right to investigate, compromise, and defend the same.

G. INSURANCE

The City shall not be covered under the County's Worker's Compensation. All responsibility to pay wages, provide employee benefits, including but not limited to Worker's Compensation benefits, and other similar employer responsibilities shall remain solely with the City.

H. NOTICES

Notices required or deemed advisable under this Agreement shall be made in writing and delivered personally or by registered or certified mail upon the County to:

Waukesha County Office of Emergency Management
1621 Woodburn Road
Waukesha, WI 53188

and upon the City to:

City Administrator
City of Waukesha
201 Delafield Street
Waukesha, WI 53188

I. INDEPENDENT CONTRACTOR STATUS

The relationship of the City to the County shall be that of an independent contractor and not that of a County employee, and employees of the City shall not be entitled to any of the rights, benefits, salaries, wages or fringe benefits to which employees of the County are eligible. Nothing in this Agreement shall be construed so as to deem the City, its employees or agents to be: (1) employees or agents of the County, (2) carrying out the functions of the County, (3) effectively acting as or in place of the County, or (4) having the status of the County. The City has no authority to incur any obligations for or on behalf of the County except as specifically set forth herein. No federal, state or local taxes or Medicare deductions or contributions shall be made by the County on behalf of the City.

NON-ASSIGNMENT OF AGREEMENT

The parties agree that there shall be no assignment or transfer of this Agreement, nor of any interests, rights or responsibilities herein contained, except as agreed to in writing between the parties.

K. WAIVER OF BREACHES, CUMULATIVE REMEDIES

No waiver of any breaches of this Agreement shall be held to be a waiver of any other or any subsequent breaches. All remedies afforded in this Agreement shall be considered to be cumulative and in addition to any other remedies provided by law.

L. MODIFICATION TO AGREEMENT

There shall be no modifications to this Agreement, except in writing, signed by both parties.

M. INTEGRATION OF AGREEMENT

The entire understanding and Agreement of the parties with respect to hazardous materials emergency response services provided by the City within Waukesha County is contained herein. This Agreement supersedes all previous agreements, whether written or oral and all negotiations as well as any current agreements presently in effect between the City and the County relating to the subject matter of this Agreement.

N. SIGNATURES

Both parties hereto having read and understood the entirety of this Agreement consisting of 7 typewritten pages hereby affix their duly authorized signatures.

CITY OF WAUKESHA:

Mayor Shawn N. Reilly

Date: _____

Gina L. Kozlik, City Clerk

Date: _____

WAUKESHA COUNTY:

Daniel P. Vrakas, County Executive

Date: _____



Waukesha Fire Department Hazardous Materials Incident Response Information and Decision Matrix

Contact requesting agency and complete as thoroughly as possible.

Contact Person: _____

Phone Number: _____ Radio Frequency: _____

Date: _____ Time: _____

Incident Location: _____

What has occurred: _____

When did incident occur (date/time): _____

SITUATION STATUS

VALUE

Are people involved?

☐ Unknown

☐ People Trapped?

☐ People Injured?

☐ People Contaminated?

What is the size, severity and immediacy of the threat?

☐ Unknown

☐ Incident (fire/release) in progress? (3)

Name of product and/or ID numbers: _____

☐ Container/Facility/Vehicle damaged or failure likely? (2)

☐ Conditions stable (1)

☐ Minimal or no threat detected (0)

What type of facility/container/vehicle is involved?

☐ Unknown

☐ Railcar, road transport tanker, or bulk storage (3)

☐ Totes, drums, small-medium tanks (2)

☐ Small packages, bottles or containers (1)

☐ No damage (0)

What is the location of the incident?

☐ Unknown

☐ Outside (3)

☐ Confined in container/facility/vehicle (2)

☐ Confined to room/area of facility (1)

☐ No fire/release (0)

QUANTITY AT RISK

To what degree is the quantity a threat?

☐ Unknown

☐ Greater than or equal to 55 gallons, 500 lbs., 200 cubic feet (3)

☐ Greater than or equal to 20 gallons but less than 55 gallons, 500 lbs., 200 cubic feet (2)

☐ Less than 20 gallons, 50 lbs., 20 cubic feet (1)

☐ Other (small quantity) (0)

PHYSICAL AND TOXICOLOGICAL HAZARDS

What hazard does the material present?

☐ Unknown

☐ Inhalation, eye/sight hazard, skin absorbent (3)

☐ Inhalation, skin contact, eye/sight irritant (2)

☐ Chronic long term exposure greater than 30 minutes (1)

☐ No known physical concerns (0)

CHEMICAL HAZARDS

What hazard does the material present?

☐ Unknown

- ☐ Radioactive, air/moisture reactive, ability to polymerize, explosive, poisonous gas (3)
- ☐ Cryogenic, corrosive, combustible/flammable (2)
- ☐ Small amounts of the above (1)
- ☐ Stable Product (0)

LOCAL RESOURCES

- ☐ Exceeds local fire department response capabilities (3)
- ☐ Local responders can handle with limited outside assistance (2)
- ☐ No on-site assistance needed/phone or radio assistance only (1)
- ☐ No assistance needed by local responders (0)

Who has jurisdictional authority? _____

Who is the Incident Commander? _____

What is the Command Post telephone number and radio frequency? _____

What is the location of the staging area? _____

What is the recommended route to incident location? _____

What is the approximate number of responders on scene? _____

Other modifying conditions present:

☐ Waterways

☐ Weather

☐ Target Hazard

☐ Population density

☐ Critical facility

☐ Other _____

Has County Emergency Manager been notified?

☐ Yes

☐ No

☐ Unknown

TOTAL ALL BOXES TO ESTABLISH APPROPRIATE RESPONSE

TOTAL

14 - 21 Level I - Full response by WFD Special Service Team

8 - 13 Level II - On-site advisory analysis by WFD

0 - 7 Level III - Local fire department or WFD Telephone Assistance

Notify the requesting agency that you will call back as soon as possible. Use SST personnel to assist in the evaluation of the Physical, Toxicological, and Chemical Hazards, as well as the Situation Status potential as required. Check existing logistical situation and dispatch the appropriate units. Call back the necessary resources following SOG "County Level B Hazardous Material Response". Contact requesting agency and notify them of resources en-route.

NOTIFICATION INFORMATION

Waukesha County Emergency Manager Bill Stolte

Office (262) 446-5070

Mobile (414) 324-1679

Email wstolte@waukeshacounty.gov

State Reporting (DEG 24 hour emergency)

(800) 943-0003