11154

State of North Carolina

ROY COOPER
ATTORNEY GENERAL

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

REPLY TO:
Crime Control Section
(919) 716-6565

March 3, 2016

Via Overnight Mail

Mr. Tom Carruthers
City Attorney
City of Greensboro
300 W. Washington Street
Suite 260
Greensboro, North Carolina 27401

RE: The Letter of Agreement concerning Hazardous Materials Emergency Response Team Services.

Dear Mr. Carruthers:

Enclosed is an original of the agreement for Hazardous Materials Emergency Response Team Services. The Agreement includes this Letter of Agreement, Contract, Exhibits, and Standard Operating Guidelines (SOGs)/General Operating Guidelines (GOGs). The Agreement is complete only when you take these four elements as a whole.

The Agreement is subject to the approval of your governing body as signified by signature of local authorities. This Agreement is subject to the following conditions:

1. **The City of Greensboro Hazardous Materials Emergency Response Team services Agreement is as detailed in the Contract and Exhibits. Please be advised that there is no promise, express or implied as to the future funding in subsequent biennia as funding is subject to legislative approval.**

2. **The Contractor will operate a hazardous materials emergency response team utilizing the State Hazardous Materials Emergency Response Vehicle and State Equipment Trailers supplied by the State.**

3. **The parties agree that the details of the Contractor's services are specified in the Standard Operating Guidelines/General Operating Guidelines.**

4. **The term of the Agreement will be from July 1, 2016 through June 30, 2020. The parties recognize that we do not guarantee future funding and the services**

contracted for may need to change. Accordingly, we make no promises, express or implied, regarding future funding.

5. **If not already provided, the Contractor agrees to provide original certificates of insurance for worker's compensation coverage for Regional Response Team personnel and automobile liability and automobile collision insurance for Contractor's vehicles used pursuant to the terms of this Agreement. The certificates of insurance must be acceptable to the State's Risk Management Division.**

6. **The parties agree that the Contractor will provide services to the primary response area as generally depicted in Exhibit A and described in Section 2.1.1 of the Contract. The parties agree that the Contractor will provide services outside the primary response area as described in Section 2.1.5 of the Contract.**

7. **The Contractor recognizes that rights or authorities do not arise under this Agreement until the State issues a written "Notice to Proceed." The State only will issue a "Notice to Proceed" after the Contractor is trained and equipped to respond according to the Agreement and OSHA requirements.**

If the conditions of the Agreement including this Letter of Agreement, Contract, Exhibits, and Standard Operating Guidelines (SOGs)/General Operating Guidelines (GOGs) are satisfactory, please sign and return the original Agreement to me on or before Thursday, March 31, 2016. Please note that the Agreement is not final until executed by all parties listed. We will return a copy of the original Agreement with all signatures to you. If you have questions, please contact me at (919) 716-6565.

Sincerely,

Cheryl A. Perry

Cheryl A. Perry
Assistant Attorney General

Enclosures

c: Mike Sprayberry, Director, Division of Emergency Management
Joe Wright, Deputy Director, Division of Emergency Management
Justin Graney, RRT Program Coordinator, Division of EM
Bobby Nugent, Fire Chief, Greensboro Fire Department
William F. Van Wert, Jr., RRT Project Administrator, Greensboro Fire Department

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Rudy Hinnant, CIC, LUTCF
Vice-Chairman

Everette Arnold, CPCU, ARM
Executive Director

March 24, 2016

Cheryl A. Perry
Assistant Attorney General
State of North Carolina
Department of Justice
P O BOX 629
Raleigh, NC 27602

Re: Hazardous Materials Emergency Response Team Services Agreement
Between the State of North Carolina and the City of Greensboro
July 1, 2016 through June 30, 2020

The City of Greensboro is self-funded for auto and general liability losses. Any agreement signed by the City will be covered under the self-funded plan according to the provisions of the agreement and applicable law. The first $100,000. of any liability loss will be self-funded by the City and any higher amount will be payable by the Local Government Excess Liability Fund, Inc., up to a total limit of $2,000,000. (subject to the provisions of the Excess Liability Fund).

The City is also self-funded for (over the road) collision losses. Collision losses will be covered under the self-funded plan, according to the provisions of the agreement.

The City is also self-funded for Workers' Compensation losses up to $1,000,000.00 per Accident. Statutory Excess Workers' Compensation is purchased from Safety National to apply over the self-funded Retention.

Very truly yours,

Everette Arnold, CPCU, ARM
Executive Director

Cc: Bobby Fitzjohn (via email)
Becky Peterson-Buie (via email)
Bill Van Wert (via email)

Regional Hazardous Materials
Emergency Response Team Agreement

CONTRACT FOR

REGIONAL HAZARDOUS MATERIALS EMERGENCY

RESPONSE TEAM SERVICES

Between

THE STATE OF NORTH CAROLINA,
ACTING BY AND THROUGH
THE DEPARTMENT OF PUBLIC SAFETY
FORMERLY KNOWN AS
THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

AND

CITY OF GREENSBORO, NORTH CAROLINA
GREENSBORO, NORTH CAROLINA

STATE OF NORTH CAROLINA
PAT McCRORY, GOVERNOR
FRANK L. PERRY, SECRETARY
DEPARTMENT OF PUBLIC SAFETY

July 1, 2016

AGREEMENT FOR

REGIONAL HAZARDOUS MATERIALS

EMERGENCY RESPONSE TEAM SERVICES

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CONTRACT FOR HAZARDOUS MATERIALS

REGIONAL RESPONSE TEAM SERVICES

General Contract Information

1.0 **Contract type:**

This Agreement is between the State of North Carolina Department of Public Safety, Division of Emergency Management, acting by and through the Secretary of the Department of Public Safety, (hereinafter STATE) and the City of Greensboro (hereinafter CONTRACTOR) for the provision of regional hazardous materials emergency response services as described herein and authorized pursuant to N.C.G.S. § 166A-20-et seq.

1.1 **Recitals:**

In order to protect life and property against the dangers of emergencies involving hazardous materials and terrorist incidents, STATE is authorized to assign and make available for use in any county, city or district, all or any part of a Hazardous Materials Regional Response Team or Teams (hereinafter Hazmat Team). STATE desires to enter into this Agreement to establish CONTRACTOR as a hazmat team, and the CONTRACTOR desires to be so designated and to enter into this Agreement.

1.2 **Contract term:**

This Agreement shall be from the 1st day of July, 2016 to the 30th day of June, 2020. This Agreement is made to establish a Regional Response Team in the State of North Carolina. It is the intent of the parties that this Agreement shall run concurrently with the Agreements for the other six Regional Response Teams.

Subject to legislative funding, sufficient revenues and upon approval by STATE, STATE may extend this Agreement from the 1st day of July, 2020 to the 30th day of June, 2021.

Standard Contract Terms and Conditions

2.0 Definitions:

"Administrative costs" means those administrative expenses incurred by the regional response team to maintain incident readiness and respond to an authorized hazmat or terrorist incident and those administrative expenses incurred by the regional response team to provide a vehicle to tow the State Equipment Trailers for use during an authorized hazmat or terrorist incident.

"Agreement" means this contract, together with a letter of Agreement, exhibits, and addenda. Exhibits and addenda include the following:

Exhibit A	Response Area Map
Exhibit B	Standard or General Operating Guidelines
Exhibit C	Vehicle and Equipment List
Exhibit D	Training Expenses
Exhibit E	Medical Surveillance
Exhibit F	Reimbursement for Vehicle Use
Exhibit G	Administrative Costs
Exhibit H	Personnel/Salary Information
Exhibit I	Insurance Expenses
Exhibit J	Training Standards
Exhibit K	Notice to Proceed Checklist
Exhibit L	Quarterly Cost Report

Exhibit M	RRT Contract Adjustment Notice (CAN)
Exhibit N	Equipment Maintenance Costs

"Authorized hazmat or terrorist incident" means a hazmat or terrorist incident or emergency that the Regional Response Team has been authorized to respond to by the Secretary or his designee pursuant to the N.C. Guidelines for tiered response or for emergency response when it meets the guidelines for a tiered response. It does not include a local response or the use of the State Hazardous Materials Emergency Response Vehicle or use of the State Equipment Trailers for local purposes.

"Call Back" means off-duty personnel that will be called in to replace personnel responding to an authorized hazmat or terrorist incident or other administrative activities related to an authorized hazmat or terrorist incident. Reimbursement for call back personnel begins from the time that the response is authorized through the emergency phase to the time that the team is ready to respond to the next request for emergency services and administrative activities have concluded and call-back personnel are relieved from duty.

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

"Communications Officer" or "State Communications Officer" or "Emergency Management Officer" means the person that serves as the Communications Officer or Communications Manager for the North

Carolina Department of Public Safety, Division of Emergency Management 24-hour Emergency Operations Center.

"Contractor" means the local government agency by which the hazmat service or services will be performed under this Agreement.

"Director" means the Director of the Division of Emergency Management, Department of Public Safety.

"Division Duty Officer" means the Director of the Division of Emergency Management, Deputy Director of the Division of Emergency Management, or other designated individual who serves as the on-call Division Duty Officer (DDO).

"Exposure incidents" means exposure of a hazmat team member to hazardous materials as a result of response to an authorized hazmat or terrorist incident.

"Hazardous material" or "Hazmat" means any material defined as a hazardous substance under 29 Code of Federal Regulations § 1910.120(a)(3).

"Hazardous Materials Emergency Response Fund" means that fund established pursuant to North Carolina General Statute §166A-28.

"Hazardous materials emergency response team" or "hazmat team" means an organized group of persons specially trained and equipped to respond to and control actual or potential leaks or spills of hazardous materials.

"Hazardous materials incident," "hazardous materials emergency," or "hazmat incident" or "hazmat emergency" means an uncontrolled release, or threatened release of a hazardous substance requiring outside assistance by a local fire department or hazmat team to contain and control.

"Hazardous Materials RRT Coordinator" or "Hazmat RRT Program Coordinator" or "Hazardous Materials Program Manager" or "Hazmat Program Manager" or "RRT Program Coordinator" or "State Hazardous Materials RRT Coordinator" or "State Hazmat RRT Coordinator" or "RRT Coordinator" means the individual designated by the Division of Emergency Management as the advisor to the Regional Response Teams in the area of hazardous materials. The RRT Coordinator will review all requests or claims for reimbursement and requests for replacement of disposable materials or damaged equipment. The RRT Coordinator has responsibilities in training, planning and operations, and will serve as a part of the inspection team for the Regional Response Teams.

"Life threatening" means a situation that may pose an immediate threat to a significant number of lives in the Regional Response Teams' primary response area or that would cause irreversible or delayed adverse health effects or interfere with significant number of persons' ability to escape from a dangerous situation.

"Local response" or "Local purposes" means response to any emergency incident not authorized by the Secretary or his designee or use of State Hazardous Materials Emergency Response Vehicle or

State Equipment Trailers for purposes other than authorized regional response to a hazmat or terrorist incident or emergency response which does not conform to STATE's hazmat team Standard or General Operating Guidelines regarding decisions to respond to hazardous materials or terrorist incidents which is attached as "Exhibit B" and by reference incorporated herein. "Local response" or "Local purposes" does not mean or include attendance by CONTRACTOR at training, exercises and conferences at STATE request or attendance by CONTRACTOR at training for local governments, industry and first responder organizations approved by the RRT Coordinator.

"N.C.G.S." means North Carolina General Statutes.

"NFPA" means National Fire Protection Association.

"North Carolina OSHA" means the Division of Occupational Safety & Health, North Carolina Department of Labor.

"Primary response area" means that geographical area where CONTRACTOR is principally responsible for providing regional hazardous materials emergency response services.

"Regional response team" means a team comprised of State of North Carolina Fire & Rescue Commission Certified Hazardous Materials Level 2 or Level II responders (formerly Hazardous Materials Technician) under contract with STATE to provide response to hazardous materials or terrorist emergencies at the direction of the Department of Public Safety, Division of Emergency Management.

"Replacement Personnel Costs" means those CONTRACTOR expenses for personnel who are called in to replace Regional Response Team Personnel attending training approved by the Regional Response Team Advisory Committee.

"Response costs" means those CONTRACTOR expenses resulting from the activation, demobilization, administrative activities and costs incurred by the regional response team in responding to, mitigating, and the recovery from an authorized hazmat or terrorist incident.

"Responsible party" means the person(s) or their agent(s) responsible for causing or liable for the emergency to which the CONTRACTOR responded as defined in N.C.G.S. § 166A-27.

"Secretary" means the Secretary of the Department of Public Safety.

"STATE" means the State of North Carolina, Department of Public Safety, Division of Emergency Management, acting by and through the Secretary of the North Carolina Department of Public Safety.

"State Vehicle", "State hazmat vehicle", "State Hazardous Materials Emergency Response Vehicle", "STATE's vehicles", "STATE-owned vehicles" or "State Equipment Trailers" mean the vehicles and equipment purchased and loaned to CONTRACTOR equipped to provide a Level 2, Level II, or technician-level response. The vehicles and equipment are set forth in Exhibit C of this

Agreement attached and incorporated herein by reference.

"Technician-level entry capability" or "Hazardous Materials Responder Level 2 or Level II" means the capacity of a hazmat team, in terms of training and equipment as required by the North Carolina Fire and Rescue Commission certification standards and as defined in N.C.G.S. §166A-21(8), 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. This capability means team members are certified by the State of North Carolina as Hazardous Materials Responder Level 2 or Level II at a minimum.

"Terrorist Incident" means activities that occur within the territorial jurisdiction of the United States, involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, and are intended to do one of the following:

a. Intimidate or coerce a civilian population.

b. Influence the policy of a government by intimidation or coercion.

c. Affect the conduct of a government by mass destruction, assassination, or kidnapping.

"Unit of local government" means a county or incorporated city, town or village pursuant to N.C.G.S. §166A-19.3(12).

"Utility/Staff Vehicle" means a vehicle owned by the CONTRACTOR or local government and used by the CONTRACTOR to transport N.C. Regional Response Team members and equipment to an authorized hazmat or terrorist incident. Utility/staff vehicle shall not include vehicles personally-owned by members of the Regional Response Team or vehicles owned by any other person, firm, corporation or government.

2.1 Statement of work:

2.1.1 Services to be provided by the CONTRACTOR:

During the term of this Agreement, CONTRACTOR agrees to provide Regional Response Team services within the boundary of CONTRACTOR's assigned primary response area described in Exhibit A, and by this reference incorporated herein or outside of that area at the request of the Director of the Division of Emergency Management or his designee.

CONTRACTOR is hereby designated hazmat team number 5. CONTRACTOR's response activities under this Agreement shall be limited to emergency operations, reporting and documentation activities arising from authorized hazardous materials or terrorist incidents which threaten life, property, or the environment.

CONTRACTOR shall not provide under this Agreement any services with respect to the 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, in stabilizing the hazardous materials incident or terrorist incident.

CONTRACTOR shall not be required to maintain general security and/or safety perimeters at or near sites and vessels (except in situations where it is reasonably necessary to protect life and property), 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 hazardous materials or terrorist incident to which CONTRACTOR is dispatched.

CONTRACTOR makes no representations or warranties to third parties with regard to the ultimate outcome of the hazardous materials services to be provided or response to terrorist incidents, but shall respond to the best of its abilities, subject to the terms of this Agreement.

2.1.2 **Performance conditions:**

CONTRACTOR acknowledges that prior to undertaking initial hazardous materials activities or prior to undertaking initial response to terrorist incidents under this Agreement, CONTRACTOR shall first receive written approval from the STATE to proceed with response activities in accordance with the "Notice to Proceed Checklist", attached as Exhibit K hereto and incorporated by reference herein. STATE approval shall be conditioned upon CONTRACTOR demonstrating to the STATE that its employees,

equipment and vehicles meet or exceed applicable regulatory requirements. CONTRACTOR may request in writing to be authorized to operate on a temporary basis using locally owned vehicles and equipment. Verbal approval from the STATE is insufficient. In any case, CONTRACTOR may not respond to hazardous materials or terrorist 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 hazardous materials or terrorist incidents under this Agreement until its personnel meet the training requirements as set forth in "Training Standards and Guidelines", attached as Exhibit B and incorporated by reference herein.

2.1.3 **Personnel:**

CONTRACTOR shall maintain at all times a minimum of twelve qualified, trained, medically monitored, competent, and supervised personnel capable of responding twenty-four (24) hours per day, three hundred and sixty-five days (365) per year. CONTRACTOR shall respond with a minimum number of such personnel as set forth in "Levels of Response to Hazardous Materials Incidents", attached as Exhibit B and incorporated by reference herein. CONTRACTOR shall respond with personnel who are capable of providing regional response to authorized hazmat or terrorist incidents requiring technician-level or Hazardous Materials Responder Level 2 or Level II entry capability as that term is defined by the North Carolina Fire and Rescue Commission certification standards and as defined in N.C.G.S. 166A-21.

CONTRACTOR shall limit its hazmat team activity to that within the

safety and training levels specified by the North Carolina Department of Labor, Division of Occupational Safety and Health and the most current applicable NFPA standards for a Hazardous Materials Responder.

CONTRACTOR's personnel performing duties, for the purposes of this contract shall not be employees of STATE and shall not be entitled to state benefits under the Retirement System for Teachers and State Employees, benefits for the payment of federal Social Security, employment insurance, or worker's compensation.

2.1.4 **Vehicles and equipment:**

CONTRACTOR may provide such vehicles and equipment as it currently has available as provided in Exhibit F attached and incorporated by reference herein.

CONTRACTOR may provide vehicles to tow the State Equipment Trailers for use during an authorized hazmat or terrorist incident. STATE will reimburse CONTRACTOR for vehicles used to tow the State Equipment Trailers during an authorized hazmat or terrorist incident as utility/staff vehicles as provided in Exhibit F, attached and incorporated by reference herein, but shall not reimburse CONTRACTOR for mileage at the state or local mileage rate, insurance costs or maintenance costs incurred for use of a vehicle to tow the State Equipment Trailers during an authorized hazmat or terrorist incident.

Routine maintenance of local vehicles and equipment shall be the sole responsibility of the CONTRACTOR.

Use of State Hazardous Materials Emergency Response Vehicle, State Equipment Trailers and Equipment for Local Response:

CONTRACTOR may use State Hazardous Materials Emergency Response Vehicle and State Equipment Trailers for local responses or local purposes but must reimburse STATE for local use of State Hazardous Materials Emergency Response Vehicle, equipment or State Equipment Trailers pursuant to N.C.G.S. § 166A-23(d).

Where CONTRACTOR uses State Hazardous Materials Emergency Response Vehicle, State Equipment Trailers and equipment for local response or local purposes, the CONTRACTOR is liable for major repairs, replacement costs or replacements directly attributable to the use of the vehicle, trailers and equipment for the local purposes or local response pursuant to N.C.G.S. 166A-23(d).

Repairs and Routine Maintenance to State Hazardous Materials Emergency Response Vehicle and State Equipment Trailers:

Repairs and routine maintenance to State Hazardous Materials Emergency Response Vehicle and State Equipment Trailers shall be performed by a N.C. Department of Transportation repair facility or a facility designated and approved by STATE. CONTRACTOR shall deliver the State Hazardous Materials Emergency Response Vehicle to the N.C. Department of Transportation repair facility or other facility designated and approved by STATE for routine maintenance and repairs to State Hazardous Materials Emergency Response Vehicle.

For purposes of this Agreement, repairs and routine maintenance to the State Hazardous Materials Emergency Response Vehicle consist

of the following:

(1) Semi-annual/or mileage-related services;

(2) Annual tune-ups as required for preventative maintenance; and

(3) Other maintenance as required by the manufacturer to maintain its factory warranty.

CONTRACTOR shall perform checks of the vehicles and equipment and maintain documentation of vehicle and equipment checks to meet the Pre-Incident Readiness as provided in "Incident Readiness/Vehicle and Equipment Maintenance", attached as Exhibit B and incorporated by reference herein. CONTRACTOR shall operationally test communications equipment as provided in "Incident Readiness/ Vehicle and Equipment Maintenance", attached as Exhibit B and incorporated by reference herein. CONTRACTOR is responsible for maintaining equipment in compliance with the North Carolina Department of Labor, Division of Occupational Safety and Health standards and applicable NFPA standards and manufacturer's recommendations. CONTRACTOR is responsible for maintaining protective clothing in compliance with applicable North Carolina Department of Labor, Division of Occupational Safety and Health standards and is tested as per applicable NFPA standards and manufacturer's recommendations. CONTRACTOR is responsible for maintaining other apparatus and equipment and checking, calibrating and/or testing as per manufacturer's instructions, North Carolina Department of Labor, Division of Occupational Safety and Health requirements, and applicable NFPA requirements.

Repairs and Routine Maintenance to State Equipment:

STATE shall perform or designate the entity to perform repairs and routine maintenance to STATE equipment. CONTRACTOR shall notify STATE and RRT Coordinator regarding repairs and routine maintenance needed to STATE equipment. For the purposes of this agreement, repairs and routine maintenance to state equipment include the following:

(1) Equipment checks and testing as outlined in the North Carolina Department of Labor, Division of Occupational Safety and Health standards and applicable NFPA standards and manufacturer's recommendations.

(2) Protective clothing shall comply with applicable North Carolina Department of Labor, Division of Occupational Safety and Health standards and is to be tested as per applicable NFPA standards and manufacturer's recommendations.

(3) Other apparatus and equipment shall be checked, calibrated and/or tested as per manufacturer's instructions, North Carolina Department of Labor, Division of Occupational Safety and Health requirements, and applicable NFPA requirements.

(4) Annual inspection of the State Response Vehicle and State Equipment Trailers by a qualified and approved North Carolina Annual Safety and Emissions Inspection agent.

CONTRACTOR shall provide physical facilities available for use by the Regional Response Team including a structure to house, maintain, and adequately protect the State Hazardous Materials Emergency Response Vehicle and environmentally sensitive equipment from adverse weather conditions. If CONTRACTOR has physical facilities available for use by the Regional Response Team including a structure to house, maintain, and adequately protect the State Equipment Trailers and equipment that is not environmentally sensitive, CONTRACTOR shall use such physical facilities to house, maintain and adequately protect the State Equipment Trailers and equipment that is not environmentally sensitive. If CONTRACTOR does not have physical facilities available for use by the Regional Response Team including a structure to house, maintain, and adequately protect the State Equipment Trailers and equipment that is not environmentally sensitive, CONTRACTOR may store and maintain the State Equipment Trailers and equipment that is not environmentally sensitive outdoors.

CONTRACTOR is responsible for maintaining State Hazardous Materials Emergency Response Vehicle and State Equipment Trailers so that they shall meet all Federal and State regulatory requirements.

2.1.5 **Response Procedures and Limitations:**

CONTRACTOR's obligation to provide services hereunder shall arise with respect to specific response actions, when dispatched by the Communications Officer/Emergency Management Officer or CONTRACTOR notifies the Emergency Management Officer/Communications Officer

that CONTRACTOR has begun its response and the incident is authorized by the Secretary or his designee. If such response request conforms with the STATE's hazmat teams' Standard Operating Guideline or General Operating Guideline regarding "Decision to Respond to Hazardous Materials or Terrorist Incidents", attached as "Exhibit B" and by this reference incorporated herein, the Emergency Management Officer/Communications Officer will dispatch the appropriate Regional Response Team(s) in accordance with the Standard Operating Guidelines or General Operating Guidelines. If the incident meets the Immediate Incident Dispatch criteria in the Regional Response Team Request Form in the Standard Operating Guidelines or General Operating Guidelines, CONTRACTOR shall notify the Emergency Management Officer/Communications Officer and may begin its response to the hazardous materials or terrorist incident subject to the approval of the Secretary or his designee. The Emergency Management Officer/Communications Officer shall notify the Director or his designee that the incident meets the Immediate Incident Dispatch criteria and shall notify the Director or his designee that CONTRACTOR has begun its response. The Director or his designee shall notify the Secretary or his designee that the incident meets the Immediate Incident Dispatch criteria, that CONTRACTOR has begun its response and request the Secretary's authorization of the response to the hazmat or terrorist incident. If the incident meets the Immediate Incident Dispatch criteria in the Regional Response Team Request Form and the Secretary or his designee does not authorize the response after CONTRACTOR has begun its response, CONTRACTOR shall terminate its response to the hazardous materials or terrorist incident upon notification from the Director or his designee that

the Secretary or his designee did not authorize the response. If the response is cancelled or not authorized, STATE will reimburse CONTRACTOR for a minimum of 2 hours' response costs incurred from the time CONTRACTOR notifies STATE that it began its response to the time that CONTRACTOR returns to its station.

If the incident does not meet the Immediate Incident Dispatch criteria in the Regional Response Team Request Form in the Standard Operating Guidelines or General Operating Guidelines, the Emergency Management Officer/Communications Officer shall inform the Director or his designee of the request for regional response team assistance. The Director or his designee shall contact the Secretary or his designee for authorization to dispatch the regional response team. If the Secretary or his designee authorizes dispatch of the regional response team, the Director or his designee shall notify the Emergency Management Officer/Communications Officer to dispatch the regional response team. After receiving authorization from the Secretary or his designee to dispatch the regional response team, the Emergency Management Officer/Communications Officer shall notify the regional response team leader that the Secretary or his designee authorized the dispatch of the regional response team. Response by CONTRACTOR to incidents not authorized by the Secretary or his designee shall be considered as a local response and will not be reimbursed by STATE. Attendance by CONTRACTOR at training, exercises and conferences at STATE request or attendance by CONTRACTOR at training for local governments, industry and first responder organizations approved by the RRT Coordinator are not considered a local response and are not considered use of the

State Vehicle, State Equipment Trailers and State Equipment for local purposes.

Right of refusal:

CONTRACTOR shall respond to all requests for response services by the Secretary or his designee. STATE recognizes that the obligations of the CONTRACTOR in its own jurisdiction are paramount. CONTRACTOR shall immediately inform the Emergency Management Officer/State Communications Officer at the State Emergency Operations Center when its resources are in use and unavailable during a local response or training. STATE will assign an RRT Incident Number as provided in Exhibit B, attached and incorporated by reference herein, the Standard Operating Guidelines (SOG) or General Operating Guidelines (GOG), specifically, SOG or GOG #15.

If the Secretary or his designee makes a request for response services and the CONTRACTOR is responding to a local response, CONTRACTOR may delay responding to the request for response services if the regional response Team Leader and the Secretary or his designee determine that the local response is life-threatening or determine that resources and personnel are unavailable. Within twenty-four hours following the conclusion of the local response that was the reason for the delay to the request for response services, CONTRACTOR must submit written documentation to the Director or his designee regarding the delay to respond to the request for response services. CONTRACTOR shall respond to the request for response services if the Team Leader and the Secretary or his designee determine that the local response is not life-

threatening or determine that resources and personnel are available. When the local emergency is no longer life-threatening or resources or personnel are available, CONTRACTOR shall immediately inform the Emergency Management Officer/State Communications Officer that the local response is no longer life-threatening or that its resources or personnel are again available.

If requested by the Secretary or his designee, CONTRACTOR shall provide emergency response services outside of its primary response area in order to cover the response area of a regional response team responding to a life-threatening local response or responding to a local response where resources or personnel are unavailable.

2.1.6 **Standard Operating Guidelines or General Operating Guidelines:**

CONTRACTOR and STATE agree that Hazardous Materials Regional Response Team services will be conducted in accordance with Standard Operating Guidelines or General Operating Guidelines and any subsequent amendments thereto, attached as Exhibit B and incorporated by reference herein. Amendments to Standard Operating Guidelines or General Operating Guidelines will be reviewed by the Regional Response Team Advisory Committee and approved by the Secretary or his designee.

2.2 **Contractor Compensation:**

Personnel expenses:

STATE agrees to provide for the reimbursement of personnel costs as set out in Exhibit H attached hereto and incorporated by

reference herein, when a Hazardous Materials Regional Response Team responds to an authorized hazmat or terrorist incident, attends training, exercises and conferences or provides training for local governments, industry and first responder organizations when approved by the RRT Coordinator.

CONTRACTOR's hazmat team personnel expenses which are approved, authorized and verified under this Agreement are compensable at the rates described in Exhibit H.

Equipment and Vehicles owned and/or used by CONTRACTOR

STATE agrees to provide reimbursement for use of equipment and vehicles owned by CONTRACTOR when such equipment and vehicles are used to respond to an authorized hazmat or terrorist incident as set out in Exhibit F, attached hereto and incorporated by reference herein.

CONTRACTOR may provide vehicles to tow the State Equipment Trailers for use during an authorized hazmat or terrorist incident. STATE will reimburse CONTRACTOR for vehicles used to tow the State Equipment Trailers during an authorized hazmat or terrorist incident as utility/staff vehicles as provided in Exhibit F, attached and incorporated by reference herein, but shall not reimburse CONTRACTOR for mileage at the state or local mileage rate, insurance costs, or maintenance costs for use of a vehicle to tow the State Equipment Trailers during an authorized hazmat or terrorist incident. Except as provided in Section 2.2 "Administrative Costs", STATE shall not reimburse CONTRACTOR for mileage at the state or local mileage rate, insurance costs, or

maintenance costs during an authorized hazmat or terrorist incident for use of vehicles to tow the State Equipment Trailers during an authorized hazmat or terrorist incident.

STATE shall not provide reimbursement for compensation expenses and replacement equipment directly attributable to a non-authorized, unauthorized or local response.

Replacement of disposable materials and damaged equipment:

STATE will provide the replacement of disposable materials and equipment damaged during response to an authorized hazmat or terrorist incident. CONTRACTOR shall submit to the RRT Coordinator, Division of Emergency Management, 1636 Gold Star Drive, Raleigh, NC 27607, on CONTRACTOR or STATE letterhead, a list of items that need to be replaced due to use or damage incurred in an authorized hazmat or terrorist incident. Replacement items will be purchased and delivered to CONTRACTOR by the Division of Emergency Management in accordance with State Purchasing and Contract Procedures.

Equipment Maintenance Compensation:

STATE agrees to provide for equipment maintenance costs as set out in Exhibit N, attached hereto and incorporated by reference herein. STATE will reimburse CONTRACTOR for equipment maintenance costs for repairs and upgrades of equipment used for the hazardous materials emergency response program. STATE will reimburse CONTRACTOR quarterly for equipment maintenance costs, not to exceed Four Thousand Dollars ($4,000.00) per team per State fiscal year unless approved by the Director or his designee.

Compensation and reimbursement for equipment maintenance costs are subject to the approval of the Director of the Division of Emergency Management or his designee and the Controller of the Department of Public Safety. Requests for compensation and reimbursement for equipment maintenance costs must be submitted quarterly and accompanied by a Department of Public Safety, Division of Emergency Management Quarterly Cost Report as set out in Exhibit L, attached hereto and incorporated by reference herein, and other documentation including invoices, receipts, equipment descriptions and an explanation of the maintenance conducted or performed. CONTRACTOR shall immediately notify the RRT Coordinator when equipment maintenance is conducted or performed and equipment is unavailable for use to respond to an authorized hazmat or terrorist incident. STATE shall not use equipment maintenance underruns to offset other costs overruns. Without additional State funds, if approved by the Secretary and Controller, STATE may use cost underruns from medical surveillance or training costs to offset overruns incurred in equipment maintenance costs by using a Department of Public Safety, Division of Emergency Management RRT Contract Adjustment Notice (CAN), attached as Exhibit M and incorporated by reference herein. CONTRACTOR shall submit a Quarterly Cost Report, attached as Exhibit L and incorporated by reference herein, to the RRT Coordinator at each quarterly Regional Response Team Advisory Committee meeting on the following months for expenses incurred during the preceding quarter:

Quarterly Cost Report Due Date	Report Covering Period
October 2016	July 1, 2016-September 30, 2016
January 2017	October 1,2016-December 31, 2016

April 2017	January 1, 2017-March 31, 2017
July 2017	April 1, 2017-June 30, 2017
October 2017	July 1, 2017-September 30, 2017
January 2018	October 1,2017-December 31, 2017
April 2018	January 1, 2018-March 31, 2018
July 2018	April 1, 2018-June 30, 2018
October 2018	July 1,2018-September 30,2018
January 2019	October 1, 2018-December 31,2018
April 2019	January 1, 2019-March 31, 2019
July 2019	April 1, 2019-June 30, 2019
October 2019	July 1, 2019-September 30, 2019
January 2020	October 1,2019-December 31, 2019
April 2020	January 1, 2020-March 31, 2020
July 2020	April 1, 2020-June 30, 2020

If STATE extends contract:

October 2020	July 1,2020-September 30,2020
January 2021	October 1, 2020-December 31,2020
April 2021	January 1, 2021-March 31, 2021
July 2021	April 1, 2021-June 30, 2021

The RRT Coordinator shall submit the Cost Report to the Controller's Office of the Department of Public Safety.

Administrative Costs

STATE agrees to provide for administrative costs as set out in Exhibit G attached hereto and incorporated by reference herein. Compensation and reimbursement for administrative costs shall not exceed Twenty Thousand Dollars ($20,000.00) per team per State fiscal year and shall be expended as follows:

(1) Administrative costs to maintain incident readiness for and respond to authorized hazmat or terrorist incidents; and

(2) Administrative costs to provide a vehicle to tow the State Equipment Trailers used during an authorized hazmat or terrorist incident.

STATE will reimburse CONTRACTOR Five Thousand Dollars ($5,000.00) quarterly for administrative costs, not to exceed Twenty Thousand Dollars ($20,000.00) per team per State fiscal year. Compensation and reimbursement for administrative costs are subject to the approval of the Director of the Division of Emergency Management or his designee and the Controller of the Department of Public Safety. Requests for compensation and reimbursement for administrative costs must be submitted quarterly and accompanied by a Department of Public Safety, Division of Emergency Management Quarterly Cost Report as set out in Exhibit L, attached hereto and incorporated by reference herein. Without additional State funds, if approved by the Secretary and Controller, STATE may use cost underruns from medical surveillance or training costs to offset overruns incurred in administrative costs by using a Department of Public Safety, Division of Emergency Management RRT Contract Adjustment Notice (CAN), attached as Exhibit M and incorporated by reference herein. CONTRACTOR shall submit a Quarterly Cost

Report, attached as Exhibit L and incorporated by reference herein, to the RRT Coordinator at each quarterly Regional Response Team Advisory Committee meeting on the following months for expenses incurred during the preceding quarter:

Quarterly Cost Report Due Date	Report Covering Period
October 2016	July 1, 2016-September 30, 2016
January 2017	October 1,2016-December 31, 2016
April 2017	January 1, 2017-March 31, 2017
July 2017	April 1, 2017-June 30, 2017
October 2017	July 1, 2017-September 30, 2017
January 2018	October 1,2017-December 31, 2017
April 2018	January 1, 2018-March 31, 2018
July 2018	April 1, 2018-June 30, 2018
October 2018	July 1,2018-September 30,2018
January 2019	October 1, 2018-December 31,2018
April 2019	January 1, 2019-March 31, 2019
July 2019	April 1, 2019-June 30, 2019
October 2019	July 1, 2019-September 30, 2019
January 2020	October 1,2019-December 31, 2019
April 2020	January 1, 2020-March 31, 2020
July 2020	April 1, 2020-June 30, 2020
If STATE extends contract:	
October 2020	July 1,2020-September 30,2020
January 2021	October 1, 2020-December 31,2020
April 2021	January 1, 2021-March 31, 2021

The RRT Coordinator shall submit the Cost Report to the Controller's Office of the Department of Public Safety.

Training

STATE may provide advanced training and education to CONTRACTOR's current or proposed Hazardous Materials Regional Response Team members. Compensation and reimbursement for training costs, including terrorism training costs, overtime costs in accordance with the Fair Labor Standards Act and replacement personnel costs up to a total of 36 team members, shall not exceed Twenty-Five Thousand Dollars ($25,000.00) per team per State fiscal year. Replacement personnel costs must be documented and will be provided for the same position as the Team member attending training approved by the Director or his designee for overtime hours in accordance with the Fair Labor Standards Act. STATE will reimburse CONTRACTOR quarterly for training costs including terrorism training costs, not to exceed Twenty-Five Thousand Dollars ($25,000.00) per team per State fiscal year for the actual cost of training and education approved by the Director or his designee for CONTRACTOR's current or proposed Hazardous Materials Regional Response Team members as set out in Exhibits B and D, attached and incorporated by reference herein, to maintain the Hazardous Materials Regional Response Team up to the standards described in Exhibit J of this Agreement, attached and incorporated by reference herein. Compensation and reimbursement for training costs including terrorism training costs are subject to the approval of the Director of the Division of Emergency

Management or his designee and the Controller of the Department of Public Safety or his designee. Requests for compensation and reimbursement for training costs including terrorism training costs must be submitted quarterly and include documentation regarding the training, training roster, certificates if available, course outline or description, receipts, invoices, and any other pertinent information or documentation regarding the training, and accompanied by a Department of Public Safety, Division of Emergency Management Quarterly Cost Report as set out in Exhibit L, attached hereto and incorporated by reference herein. Without additional State funds, if approved by the Secretary or his designee and the Controller or his designee, STATE may use cost underruns from medical surveillance or administrative costs to offset overruns incurred in training costs by using a Department of Public Safety, Division of Emergency Management RRT Contract Adjustment Notice (CAN), attached as Exhibit M and incorporated by reference herein. CONTRACTOR shall submit a Quarterly Cost Report, attached as Exhibit L and incorporated by reference herein, to the RRT Coordinator at each quarterly Regional Response Team Advisory Committee meeting on the following months for expenses incurred during the preceding quarter:

Quarterly Cost Report Due Date	Report Covering Period
October 2016	July 1, 2016-September 30, 2016
January 2017	October 1,2016-December 31, 2016
April 2017	January 1, 2017-March 31, 2017
July 2017	April 1, 2017-June 30, 2017
October 2017	July 1, 2017-September 30, 2017
January 2018	October 1,2017-December 31, 2017

April 2018	January 1, 2018-March 31, 2018
July 2018	April 1, 2018-June 30, 2018
October 2018	July 1,2018-September 30,2018
January 2019	October 1, 2018-December 31,2018
April 2019	January 1, 2019-March 31, 2019
July 2019	April 1, 2019-June 30, 2019
October 2019	July 1, 2019-September 30, 2019
January 2020	October 1,2019-December 31, 2019
April 2020	January 1, 2020-March 31, 2020
July 2020	April 1, 2020-June 30, 2020
If STATE extends contract:	
October 2020	July 1,2020-September 30,2020
January 2021	October 1, 2020-December 31,2020
April 2021	January 1, 2021-March 31, 2021
July 2021	April 1, 2021-June 30, 2021

The RRT Coordinator shall submit the Cost Report to the Controller's Office of the Department of Public Safety.

All training must comply with governmental regulations, applicable NFPA standards and North Carolina Fire and Rescue Commission Guidelines for Hazardous Materials Responder Certification for Technician Level (Level 2 or Level II) or above, associated with the assigned duties under this Agreement.

Medical surveillance:

STATE will provide reimbursement for the cost of medical surveillance for members of the Hazardous Materials Regional Response Team which result from authorized hazmat or terrorist

incidents, as set out in Exhibit E attached hereto and incorporated by reference herein. STATE will provide compensation and reimbursement for baseline, annual maintenance, and exit physical exams for each team member. Compensation and reimbursement for a responder's base line, annual maintenance, and exit physical exams will be limited to Fifteen Thousand Dollars ($15,000.00) per team per State fiscal year. STATE will reimburse CONTRACTOR quarterly for the actual cost of responders' base line, annual maintenance, and exit physical exams, not to exceed Fifteen Thousand Dollars ($15,000.00) per team per State fiscal year. CONTRACTOR shall comply with the standards described in the "N.C. Regional Hazardous Material Response Teams' Occupational Medical Monitoring Program Guidelines" attached as Exhibit B and incorporated by reference herein. Compensation and reimbursement for costs of a responder's base line, annual maintenance, and exit physical exams are subject to the approval of the Director of the Division of Emergency Management or his designee and the Controller of the Department of Public Safety or his designee. Requests for compensation and reimbursement for a responder's base line, annual maintenance, and exit physical exams must be submitted quarterly and accompanied by a Department of Public Safety, Division of Emergency Management Quarterly Cost Report as set out in Exhibit L, attached hereto and incorporated by reference herein. Without additional State funds, if approved by the Secretary or his designee and the Controller or his designee, STATE may use cost underruns from training or administrative costs to offset overruns incurred in medical surveillance costs by using a Department of Public Safety, Division of Emergency Management RRT Contract Adjustment Notice (CAN), attached as Exhibit M and

incorporated by reference herein. CONTRACTOR shall submit a Quarterly Cost Report, attached as Exhibit L and incorporated by reference herein, and a current Team roster listing team members to the RRT Coordinator. The Quarterly Cost Report must be submitted to the RRT Coordinator at each quarterly Regional Response Team Advisory Committee meeting on the following months for expenses incurred during the preceding quarter:

Quarterly Cost Report Due Date	Report Covering Period
October 2016	July 1, 2016-September 30, 2016
January 2017	October 1,2016-December 31, 2016
April 2017	January 1, 2017-March 31, 2017
July 2017	April 1, 2017-June 30, 2017
October 2017	July 1, 2017-September 30, 2017
January 2018	October 1,2017-December 31, 2017
April 2018	January 1, 2018-March 31, 2018
July 2018	April 1, 2018-June 30, 2018
October 2018	July 1,2018-September 30,2018
January 2019	October 1, 2018-December 31,2018
April 2019	January 1, 2019-March 31, 2019
July 2019	April 1, 2019-June 30, 2019
October 2019	July 1, 2019-September 30, 2019
January 2020	October 1,2019-December 31, 2019
April 2020	January 1, 2020-March 31, 2020
July 2020	April 1, 2020-June 30, 2020
If STATE extends contract:	
October 2020	July 1,2020-September 30,2020
January 2021	October 1, 2020-December 31,2020
April 2021	January 1, 2021-March 31, 2021
July 2021	April 1, 2021-June 30, 2021

The RRT Coordinator shall submit the Cost Report to the Controller's Office of the Department of Public Safety.

All requests for compensation and reimbursement for a responder's base line, annual maintenance, and exit physical exams must be accompanied by the medical providers' invoice and a roster of the names of team personnel who received exams.

Reimbursement for medical expenses incurred due to a documented exposure at an authorized hazmat or terrorist incident is subject to review by the RRT Coordinator and the approval of the Director of the Division of Emergency Management or his designee and will be made in accordance with "Medical Surveillance" attached as Exhibit B hereto and incorporated by reference herein.

Vehicles and equipment loans:

STATE agrees to loan to CONTRACTOR two equipment trailers and a hazardous materials emergency response vehicle equipped to provide a technician level (Level 2 or Level II) response. The State Hazardous Materials Emergency Response Vehicle, the State Equipment Trailers and equipment are set forth in Exhibit C of this Agreement and incorporated herein by reference. CONTRACTOR shall be compensated by STATE under this Agreement for its authorized State hazmat or terrorist incident response costs only. Such State hazmat or terrorist response costs may include, but are not limited to, compensation for:

Vehicles and apparatus:

For response to an authorized hazmat or terrorist incident, STATE shall compensate CONTRACTOR for vehicle use at the rates described in Exhibit F to this Agreement, attached and incorporated by reference herein. For response to an authorized hazmat or terrorist incident, CONTRACTOR may provide vehicles to tow the State Equipment Trailers for use during an authorized hazmat or terrorist incident. STATE will reimburse CONTRACTOR for vehicles used to tow the State Equipment Trailers during an authorized hazmat or terrorist incident as utility/staff vehicles as provided in Exhibit F, attached and incorporated by reference herein, but shall not reimburse CONTRACTOR for mileage at the state or local mileage rate, insurance costs, or maintenance costs for use of a vehicle to tow the State Equipment Trailers during an authorized hazmat or terrorist incident. A Regional Response Team shall not be reimbursed for more than four utility/staff vehicles per authorized hazmat or terrorist incident without prior approval of the Director or his designee. CONTRACTOR shall provide fuel receipts and completed fuel logs by the tenth day of each month for the period covering the prior month for fuel purchases made by CONTRACTOR using the State issued fuel credit account or the State fuel key fob.

Personnel expenses:

CONTRACTOR's hazmat team personnel expenses that are approved, authorized and verified under this Agreement are compensable at the rates described in Exhibit H. CONTRACTOR shall submit an active personnel roster to the RRT Coordinator with the October 2016, October 2017, October 2018, October 2019, and October 2020

Quarterly Cost Reports. Requests for compensation and reimbursement for personnel expenses must be submitted and accompanied by a completed Exhibit H Personnel Salary Information Form, attached hereto and incorporated by reference herein.

Replacement of disposable materials and damaged equipment:

CONTRACTOR shall submit to the RRT Coordinator, Division of Emergency Management, 1636 Gold Star Drive, Raleigh, N.C. 27607, on CONTRACTOR letterhead, a list of items that need to be replaced due to use or damage incurred in an authorized hazmat or terrorist incident.

Workers Compensation:

CONTRACTOR or CONTRACTOR programs maintaining self-insurance or a self-insured retention fund shall maintain at its own expense and keep in effect workers compensation insurance for CONTRACTOR personnel performing duties for CONTRACTOR used pursuant to the terms of this Agreement. STATE will reimburse CONTRACTOR quarterly for actual workers compensation costs, not to exceed Five Thousand Dollars ($5,000.00) per team per State fiscal year. Compensation and reimbursement for complying with the worker's compensation requirements of this contract are subject to the approval of the Director of the Division of Emergency Management or his designee and the Controller of the Department of Public Safety. Requests for compensation and reimbursement for complying with the worker's compensation requirements of this contract must be submitted quarterly and accompanied by a Department of Public Safety, Division of Emergency Management Quarterly Cost Report as set out in Exhibit L, attached hereto and incorporated by

reference herein. CONTRACTOR shall submit a Quarterly Cost Report, attached as Exhibit L and incorporated by reference herein to the RRT Coordinator on the following months for expenses incurred during the preceding quarter:

Quarterly Cost Report Due Date	Report Covering Period
October 2016	July 1, 2016-September 30, 2016
January 2017	October 1,2016-December 31, 2016
April 2017	January 1, 2017-March 31, 2017
July 2017	April 1, 2017-June 30, 2017
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April 2018	January 1, 2018-March 31, 2018
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April 2019	January 1, 2019-March 31, 2019
July 2019	April 1, 2019-June 30, 2019
October 2019	July 1, 2019-September 30, 2019
January 2020	October 1,2019-December 31, 2019
April 2020	January 1, 2020-March 31, 2020
July 2020	April 1, 2020-June 30, 2020
If STATE extends contract:	
October 2020	July 1,2020-September 30,2020
January 2021	October 1, 2020-December 31,2020
April 2021	January 1, 2021-March 30, 2021
July 2021	April 1, 2021-June 30, 2021

The RRT Coordinator shall submit the Cost Report to the Controller's Office of the Department of Public Safety.

Billing system:

If CONTRACTOR elects reimbursement for its response costs, it shall bill the STATE for the response costs within fourteen (14) days of the completion of the authorized hazmat or terrorist incident response. CONTRACTOR's claim for reimbursement shall include complete incident documentation. CONTRACTOR's claim for reimbursement shall be on STATE-approved forms and shall contain such documentation as is necessary to support STATE's cost recovery operations and financial audits. Incident Documentation shall be reviewed by the RRT Coordinator. The STATE will reimburse Contractor as soon as practicable in accordance with Standard Operating Guidelines or General Operating Guidelines, attached as Exhibit B and incorporated by reference herein.

STATE agrees to bill responsible parties for the STATE hazmat team recovery costs. The STATE will not bill responsible parties until it receives from the CONTRACTOR complete incident documentation as described in "Incident Documentation", attached as Exhibit B and incorporated by reference herein. STATE will bill the responsible party or parties within thirty days of the receipt of complete and accurate incident documentation from CONTRACTOR. These costs shall be billed to the responsible party pursuant to N.C.G.S. §166A-27.

Pursuant to N.C.G.S. §166A-27, CONTRACTOR shall cooperate fully with STATE and the N.C. Department of Justice if the Responsible Party does not pay the response costs and an action is instituted in the superior court of the county in which the release occurred

to recover the response costs. Cooperation includes, but is not limited to, attendance at and preparation for meetings, interviews, discovery, depositions, mediation, arbitration, pre-trial motions, trial and all other aspects of litigation or settlement of the action filed to recover response costs.

2.3 **Prior approval:**

CONTRACTOR will be reimbursed only for authorized hazmat or terrorist incidents. Granting of authorization by the Secretary or his designee constitutes STATE's Agreement to pay CONTRACTOR's team costs from the Hazardous Materials Emergency Response Fund.

CONTRACTOR shall immediately notify the Emergency Management Officer or State Communications Officer of all emergency response activities undertaken pursuant to this Agreement.

CONTRACTOR agrees to make reasonable and good faith efforts to minimize responsible party and STATE expenses.

2.4 **Notification that the fund is fiscally unsound:**

If the hazardous materials emergency response fund set up pursuant to N.C.G.S. §166A-28 becomes depleted or fiscally unsound, STATE shall immediately notify the CONTRACTOR who may upon receipt of such notice suspend response actions under this Agreement.

For purposes of this section, "fiscally unsound" shall mean the balance in the Hazardous Materials Emergency Response Fund is less than Twenty Five Thousand Dollars ($25,000) and "immediately" shall mean within twelve hours of CONTRACTOR

receiving the hazmat or terrorist incident emergency response request.

CONTRACTOR shall be reimbursed for any unpaid team recovery costs after the Fund becomes depleted or fiscally unsound, if additional funds become available to the Hazardous Materials Emergency Response Fund and CONTRACTOR has billed STATE as set forth in § 2.2.

If CONTRACTOR commences a response to a hazardous materials or terrorist incident subsequent to the State notification that the fund is depleted or fiscally unsound, CONTRACTOR assumes the risk of non-payment if STATE is unable to obtain additional funds for the Hazardous Materials Emergency Response Fund or is unable to recover from the responsible party.

2.5 **CONTRACTOR status:**

CONTRACTOR certifies it is a unit of local government and is not an employee of the State of North Carolina.

2.6 **Assignments and subcontracts:**

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Agreement.

2.7 **Successors in interests:**

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.

2.8 **Compliance to government regulations and NFPA standards:**

CONTRACTOR agrees to comply with federal, state, local laws, and the most current applicable NFPA standards, codes, regulations and/or ordinances applicable to the work performed under this Agreement, including but not limited to, the North Carolina OSHA and the Fair Labor Standards Act. Failure to comply with such requirements shall constitute a breach of this Agreement and shall be grounds for termination. CONTRACTOR shall provide adequately trained personnel appropriately licensed by the State to operate the State Hazardous Materials Emergency Response Vehicle and the State Equipment Trailers.

2.9 **Acts of God:**

Neither party to this Agreement shall be responsible for delay or default caused by fire, riots, acts of God and/or war which is beyond the party's reasonable control. STATE or CONTRACTOR may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent performance of the Agreement.

2.10 **State Tort Claims Act:**

During operations authorized by this contract, CONTRACTOR and members of the Hazardous Materials Regional Response Team shall be agents of the state and shall be defended from liability and judgments paid in accordance with Article 31A of Chapter 143 of the North Carolina General Statutes. For purposes of this section, "operations" means activities directly related to authorized hazmat or terrorist incidents, but not a local response. "Operations" include travel to and from activities

directly related to the authorized hazmat or terrorist incident in the State Hazardous Materials Emergency Response Vehicle and in the State Equipment Trailers. "Operations" do not include travel to and from the authorized hazmat or terrorist incident in any vehicles other than in the State Hazardous Materials Emergency Response Vehicle and State Equipment Trailers. "Operations" also include attendance at training activities approved by the Director or his designee that is provided at state expense under this contract for the members of the Regional Response Team but does not include travel to and from the training. "Operations" may also include attendance at training, conferences and exercises at STATE request in the State Hazardous Materials Emergency Response Vehicle and in the State Equipment Trailers, but does not include travel to and from the training, conferences and exercises in any vehicles other than in the State Hazardous Materials Emergency Response Vehicle and State Equipment Trailers. The coverage afforded a CONTRACTOR and members of the Regional Response Team under the N.C. Tort Claims Act shall be excess coverage over any commercial liability insurance. This contract does not waive the sovereign immunity of the State nor the CONTRACTOR with respect to any claim.

Limitations:

This Agreement in no way limits a CONTRACTOR from responding with State Hazardous Materials Emergency Response Vehicle, State Equipment Trailers, State equipment and supplies under local government mutual aid Agreements or other contracts under local authority subject to limitations set forth in paragraphs 2.1.4 and 2.1.5.

Notifications:

CONTRACTOR shall immediately report by telephone and in writing any demand, request or occurrence that may reasonably give rise to a claim against STATE. Such reports shall be made to the Director and to the Department of Justice legal advisor for the Division of Emergency Management.

2.11 **Indemnification:**

When acting as other than an agent of STATE under this Agreement and when using the State Hazardous Materials Emergency Response Vehicle, State Equipment Trailers, State equipment, procedures or training, CONTRACTOR shall indemnify, defend and hold harmless STATE, its officers, divisions, agents, employees and members, from all claims, suits or actions of any nature arising out of the activities or omissions of CONTRACTOR, its officers, subcontractors, agents or employees subject to the North Carolina Tort Claims Act and the North Carolina Constitution. When acting as an agent of STATE under this Agreement and when using vehicles and equipment not owned by STATE, CONTRACTOR shall indemnify, defend and hold harmless STATE, its officers, divisions, agents, employees and members, from all claims, suits or actions of any nature arising out of the activities or omissions of CONTRACTOR, its officers, subcontractors, agents or employees subject to the North Carolina Tort Claims Act and the North Carolina Constitution. Notwithstanding the foregoing, to the extent that CONTRACTOR does not purchase a contract of insurance to meet this requirement, it shall not be deemed to have waived its governmental immunity as otherwise provided by law.

2.12 **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.

2.13 **Access to records:**

Each party to this contract, and/or its duly authorized representative shall have access to the other party's books, documents, investigative reports, papers and records and accounts which are directly pertinent to this Agreement for the purpose of making financial, maintenance or regulatory audit. Such records shall be maintained for at least five years or longer where required by law or as required pursuant to paragraph 2.26 herein.

Confidentiality:

Except as otherwise provided by law, each party to this Agreement mutually agrees that they shall not in any way, except as may be required in connection with this Agreement, disclose each other's confidential information to a third party. The rights and obligations set forth in this section shall survive termination of the contract. Any duty under this sub-section shall arise only upon actual and specific notice to the other party that an item is confidential and shall be in conformance with North Carolina's public records law.

Release of information, reports, and documents

STATE may release information, reports, documents, including incident reports in accordance with the North Carolina Public Records Law, Chapter 132 "Public Records" of the North Carolina General Statutes, and other applicable laws, rules, and regulations. CONTRACTOR shall forward all requests for information to the RRT Coordinator for STATE to process to determine whether to release information in accordance with the North Carolina Public Records Law, Chapter 132 "Public Records" of the North Carolina General Statutes, and other applicable laws, rules, and regulations. STATE shall not release sensitive public security information as defined in N.C.G.S. 132-1.7, Chapter 132 "Public Records" of the North Carolina General Statutes, and applicable laws, rules and regulations. During an authorized hazmat or terrorist incident, the Department of Public Safety, Division of Emergency Management representative shall work with the incident Public Information Officer regarding the determination to release information.

2.14 **Amendments:**

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

2.15 **Payment of CONTRACTOR's obligations:**

CONTRACTOR agrees to make payment promptly as due 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 STATE may be held liable, the

Director of the Division of Emergency Management, 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 and claim to this matter shall not relieve CONTRACTOR of any duty with respect to any unpaid claims.

2.16 **Nondiscrimination:**

CONTRACTOR shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. CONTRACTOR is encouraged to recruit qualified women and minorities as Hazardous Materials Regional Response Team members.

2.17 **Dual payment:**

CONTRACTOR shall not be compensated for work performed under this Agreement by any other state agency or person responsible for causing a hazardous material or terrorist emergency or incident except as approved and authorized under this Agreement.

2.18 **Insurance:**

STATE will maintain at its own expense, and keep in effect during the term of this Agreement, Comprehensive or Commercial General Liability insurance, Automobile Liability and Automobile Collision insurance for the State Hazardous Materials Emergency Response Vehicle as provided in Exhibit I, attached hereto and incorporated by reference herein.

2.18.1 **Worker's compensation:**

CONTRACTOR as the employer working under this Agreement is a subject employer under the North Carolina Worker's Compensation Law and shall comply with all worker's compensation coverage requirements. Nothing in this Agreement is intended or shall be construed to create the relationship of employer and employee, as between STATE and CONTRACTOR and CONTRACTOR's employees. CONTRACTOR as the employer working under this Agreement shall indemnify, defend and hold harmless STATE, its officers, divisions, agents, employees and members, from all worker's compensation claims, suits, or actions arising out of the activities or omissions of CONTRACTOR, its officers, subcontractors, agents or employees subject to the North Carolina Tort Claims Act and the North Carolina Constitution. Notwithstanding the foregoing, to the extent that CONTRACTOR does not purchase a contract of insurance to meet this requirement, it shall not be deemed to have waived its governmental immunity as otherwise provided by law.

2.18.2 **Comprehensive or Commercial General Liability:**

STATE shall maintain at its own expense, and keep in effect during the term of this Agreement, comprehensive or commercial general liability insurance, covering personal injury and property damage of CONTRACTOR during an authorized hazmat incident. This insurance shall include coverage for contractual liability related to the indemnity provisions of this Agreement. This insurance shall include coverage for liability related to pollution and hazmat operations. The STATE's general liability coverage limits for Contractor during an authorized hazmat or terrorist incident

shall not be less than One Million Dollars ($1,000,000.00) per occurrence or Two Million Dollars ($2,000,000.00) in the aggregate, or the equivalent. CONTRACTOR shall be a named insured on the policy or an indemnity provision must be provided. Upon CONTRACTOR's request, a current copy of this policy will be provided to the CONTRACTOR.

2.18.3 **Automobile liability:**

CONTRACTOR shall maintain at its own expense and keep in effect insurance or a self-insurance program for automobile liability insurance for its respective vehicles used pursuant to the terms of this Agreement. CONTRACTOR shall maintain at its own expense and keep in effect insurance for automobile liability for the vehicles used to tow the State Equipment Trailers when such vehicles are used to respond to an authorized hazmat or terrorist incident. STATE shall maintain at its own expense and keep in effect during the term of this Agreement automobile liability insurance for the State Hazardous Materials Emergency Response Vehicle and the State Equipment Trailers used pursuant to the terms of this Agreement. The coverage may be written in combination with the comprehensive or commercial general liability insurance. Automobile liability coverage for the State Hazardous Materials Emergency Response Vehicle shall be not less than $1,000,000.00 combined single limit occurrence or the equivalent. The CONTRACTOR must be named as an insured on the policy or an indemnity provision must be provided. Upon CONTRACTOR'S request, a current copy of this policy will be provided to CONTRACTOR.

CONTRACTOR shall maintain at its own expense and keep in effect

either property insurance or a self-insurance program for its respective vehicles used pursuant to the terms of this Agreement. CONTRACTOR shall maintain at its own expense and keep in effect property insurance for the vehicles used to tow the State Equipment Trailers when such vehicles are used to respond to an authorized hazmat or terrorist incident. STATE shall maintain at its own expense and keep in effect during the term of this Agreement automobile collision insurance for the State Hazardous Materials Emergency Response Vehicle and the State Equipment Trailers used pursuant to the terms of this Agreement. Collision coverage for the State Hazardous Materials Emergency Response Vehicle shall be not less than $1,290,000.00 to include $640,000.00 agreed vehicle value and $650,000.00 for equipment and contents. The CONTRACTOR must be named as an insured on the policy or an indemnity provision must be provided. Upon CONTRACTOR'S request, a current copy of this policy will be provided to CONTRACTOR.

2.18.4 **Notice of cancellation or change:**

CONTRACTOR and STATE agree there shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew its respective insurance coverage without prior sixty-day written notice to the STATE.

2.18.5 **Physical damage clause:**

CONTRACTOR agrees to be responsible for any physical damage to State Hazardous Materials Emergency Response Vehicle and the State Equipment Trailers and State equipment that is directly attributable to local response regardless of fault, ordinary wear and tear excepted. CONTRACTOR shall be responsible for the custody and care

of the State Hazardous Materials Emergency Response Vehicle and the State Equipment Trailers and State equipment furnished for use in connection with the performance of this Agreement and shall reimburse STATE for loss or damage to said property.

2.19 **Remedies:**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina as interpreted by North Carolina Courts. Any litigation arising out of this Agreement shall be conducted in the Courts of the State of North Carolina, Wake County.

2.20 **Termination:**

This Agreement may be terminated by mutual consent of both parties or by either party upon sixty (60) days notice in writing and delivered by certified mail or in person. STATE or CONTRACTOR may terminate this Agreement at will effective upon delivery of written notice to the CONTRACTOR or STATE, or at such later date as may be established by STATE or CONTRACTOR under the following conditions:

If funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for the purchase of an indicated quantity of services, the Agreement may be modified to accommodate a reduction in funding.

If federal or state laws, rules, regulations, or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement, or are no longer eligible for the funding proposed for payments by

this Agreement.

If any license or certification required by law or regulation to be held by CONTRACTOR to provide the services required by this Agreement is for any reason denied, revoked or not renewed.

Any termination under this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

2.20.1 Default:

STATE or CONTRACTOR upon written notice of default (including breach of contract) to the other party, may terminate the whole or any part of this Agreement: (a) if the other party fails to provide services called for by this Agreement within the time specified herein or extension thereof; or, (b) if the other party fails to perform any other provision of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and, after receipt of notice of the other party, does not correct such failures within ten days or such longer period as the notice may authorize.

2.21 Approval authority:

CONTRACTOR's representatives 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.

2.22 **Insufficient funds:**

The obligation of CONTRACTOR under this Agreement is contingent upon the availability and allotment of funds by STATE to CONTRACTOR, and CONTRACTOR may upon thirty days prior written notice terminate this contract if funds are not available.

Any and all payments to the CONTRACTOR are dependent upon and subject to legislative funding to the STATE for the purpose set forth in this agreement. All terms and conditions of this Agreement are dependent upon and subject to the allocation of funds for the hazardous materials emergency response program as provided in Chapter 166A of the North Carolina General Statutes and this Agreement shall automatically terminate if funds cease to be available.

2.23 **Return of Loaned Property:**

If this contract is terminated for any reason, then all property given to CONTRACTOR pursuant to the terms of this Agreement by STATE shall revert to STATE. CONTRACTOR agrees to properly maintain and preserve all such property until such time as STATE regains physical possession.

2.24 **Solicitation:**

CONTRACTOR shall not solicit third parties for equipment or donations.

2.25 **Arbitration:**

The parties hereto contract and agree to submit any controversy existing between them resulting from the implementation and interpretation of or arising as a result of this contract to

arbitration pursuant to Article 45C of Chapter 1 of the North Carolina General Statutes. The parties shall first submit any controversy existing between them to the procedures as set forth in "Dispute Resolution", attached as Exhibit B and incorporated by reference herein.

2.26 **Audit:**

If applicable, CONTRACTOR shall conduct audit(s) in accordance with the Single Audit Act of 1984 (31 U.S.C. §7501 et. seq.), and applicable North Carolina laws, rules and regulations regarding audits of local governments, including but not limited to, Article 5A of Chapter 147 of the North Carolina General Statutes and N.C.G.S. §159-34. CONTRACTOR shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a period of five years after the date of submission of the final expenditures report or longer where required by law. However, if litigation or an audit has been initiated prior to the expiration of the five-year period, the records shall be retained until the litigation or audit findings have been resolved. CONTRACTOR records shall be available at all reasonable times for inspection, review or audit by the N.C. State Auditor and other personnel duly authorized by STATE. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean, normal business hours of 8:30 a.m. to 5:00 p.m., Eastern Standard Time or Eastern Daylight Time, Monday through Friday. CONTRACTOR shall also provide STATE with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement. CONTRACTOR shall provide STATE and the Office of the State Auditor with an annual financial audit report. The

annual financial audit report shall include all management letters and the CONTRACTOR's response to all findings, including corrective actions to be taken. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this agreement, CONTRACTOR shall be held liable for reimbursement to STATE of all funds not spent in accordance with this Agreement, within thirty (30) days after the STATE has notified CONTRACTOR of such non-compliance.

IN WITNESS WHEREOF, the STATE and the CONTRACTOR have each executed this Agreement, this the 1st day of July, 2016.

CONTRACTING AGENCY
DIVISION OF EMERGENCY MANAGEMENT
DEPARTMENT OF PUBLIC SAFETY

WITNESS: Mary Lynn Sen

BY: _____
MICHAEL A. SPRAYBERRY, DIRECTOR
DIVISION OF EMERGENCY MANAGEMENT

WITNESS: Elizabeth K. Hamilton

BY: _____
FRANK L. PERRY, SECRETARY
DEPARTMENT OF PUBLIC SAFETY

WITNESS: Cary B. Smith

BY: _____
Chris Wilson ~~JIM WESTMORELAND~~
Asst CITY MANAGER
CITY OF GREENSBORO, NORTH CAROLINA

WITNESS: Cary B. Smith

BY: Elizabeth H. Richardson
ELIZABETH H. RICHARDSON
CITY CLERK
CITY OF GREENSBORO, NORTH CAROLINA

APPROVED AS TO FORM:

WITNESS: Cary B. Smith

BY: _____
~~TOM CARRUTHERS~~
Chief Deputy CITY ATTORNEY
CITY OF GREENSBORO, NORTH CAROLINA

APPROVED AS TO PROCEDURES:
BY: James J. Cheroke
JAMES J. CHEROKE, CONTROLLER
DEPARTMENT OF PUBLIC SAFETY

APPROVED AS TO INSURANCE REVIEW ONLY
BY: _____
BRYAN RECKLE
DEPARTMENT OF INSURANCE
RISK MANAGEMENT

APPROVED AS TO FORM SUBJECT TO EXECUTION BY FRANK L. PERRY, SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY.

ROY COOPER
ATTORNEY GENERAL OF NORTH CAROLINA
BY: _____
ASSISTANT ATTORNEY GENERAL

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IN WITNESS WHEREOF, the parties hereto have executed this Contract, the day and year indicated below.

Bobby W. Nugent, Fire Chief
The City of Greensboro Fire Department, North Carolina

Date: 4/21/16

This Instrument has been preaudited in the manner required
by the Local Government Budget & Fiscal Control Act

Richard L. Lusk, Director of Finance
The City of Greensboro, North Carolina

Date: 4/26/16