ASBESTOS COMPLIANCE INSPECTION CONTRACT AGREEMENT

THIS CONTRACT is entered into by and between the State of Wisconsin, Department of Natural Resources (the Department) and the City of Menasha Department of Public Health (the Contractor) for the purpose of assuring compliance with ch. NR 447, Wis. Adm. Code, pertaining to asbestos compliance inspections fulfilling U.S.EPA's inspection requirements. A general description of the work includes: performing landfill, complaint, renovation, and demolition asbestos inspections. Inspections shall include the collection and submittal of samples, determinations of compliance with ch. NR 447 Wis. Adm. Code, and documentation of findings including written reports and photographs when necessary. For every one of five inspections, the Contractor shall accompany, if feasible, the waste hauler to the waste disposal site to assure compliance with transportation and waste disposal regulations. The Contractor may be called upon to provide testimony in hearings and legal proceedings when violations are discovered.

FOR AND IN CONSIDERATION of the terms and conditions contained in this contract, the above-named parties agree:

1. **PERIOD OF AGREEMENT.** This contract shall commence upon its signing by both parties and be in effect through June 30, 2011, during which period all performance as described in this contract shall be fully completed to the satisfaction of the Department. The contract may be renewed upon mutual agreement by both parties. If renewed, the contract period shall be from July 1, 2011 to June 30, 2012.

2. **CANCELLATION.** The Department reserves the right to cancel this contract in whole or in part, without penalty, due to nonappropriation of funds or for failure of the Contractor to comply with terms, conditions, or specifications of this contract. The Contractor reserves the right to cancel this contract in the event the work as described under paragraph 5 cannot be completed. Both parties agree to give a minimum of a 30 day notice for cancellation of this contract.

3. **ENTIRE CONTRACT; AMENDMENTS.** This contract shall constitute the entire agreement and previous communications or agreements pertaining to the subject matter of this contract are hereby superseded. Any contractual revisions including cost adjustments and time extensions may be made only by a written amendment to this contract, signed by both parties prior to the ending date of this contract.

4. **ASSIGNMENT.** Neither this contract nor any right or duty in whole or in part under this contract can be assigned, delegated or subcontracted by the Contractor without the prior written consent of the Department. If upon the written consent of the Department this contract or any right or duty in whole or in part is assigned, the Assignee(s) shall expressly agree to assume and perform all relevant obligations expressed under the terms of this contract and be bound by the terms and conditions of this contract, to include the terms and conditions of paragraph 7. Assignment in whole or in part of this contract does not waive the contractual rights of neither party, nor the contractual relationship between the Department and the Contractor and the Department may still seek a remedy under the contract, if applicable, pursuant to law.

5. **DESCRIPTION OF WORK OR PRODUCTS.** The Contractor and the Department agree to provide the following to the satisfaction of both parties:

   A. The Contractor shall conduct Department-directed compliance inspections throughout the contract period. The Department will specifically request the contractor's assistance to perform inspections on an as- needed basis. The numbers of inspections are expected to be 10 per contract period.

   B. The Contractor shall have thorough knowledge of and be expected to make determinations regarding compliance issues with specifications for asbestos abatement projects listed in ch. NR 447 Wis. Adm. Code.

   C. The Contractor shall be required to document findings in written reports using Department format and to submit such to the Department. Expert witness testimony may also be required.

   D. All contract positions shall adhere to Federal, State, and Local requirements regarding certification, health monitoring, safety precautions, and the Air Management "Asbestos

Abatement/Demolition Inspection Guidelines", as provided by the Department (Attachment A).

E. All individual(s) performing inspections and determining compliance with ch. NR 447 Wis. Adm. Code shall be certified at the Supervisor Level through the State of Wisconsin's Department of Health Services. Any training necessary in this regard shall be the responsibility of the Contractor.

F. All individual(s) performing inspections shall meet the requirements outlined in 29 CFR part 1926.1101 and 29 CFR part 1910.1001 to perform asbestos abatement inspections.

G. The Contractor shall use as guidance the Air Management "Asbestos Abatement/Demolition Inspection Guidelines" (Attachment A).

H. The Contractor shall supply all equipment necessary to perform asbestos compliance inspections.

I. The Contractor shall possess a FAX machine to obtain relevant information from the Department for emergency situations.

J. The Contractor shall perform all asbestos compliance inspections within the term of contract period.

K. The Contractor shall allow Department personnel to accompany the representative performing inspections upon request.

L. The Contractor shall possess a camera to document findings during asbestos compliance inspections. Film and processing are the Contractor's responsibility.

M. Asbestos samples shall be submitted to the Wisconsin State Lab of Hygiene for analysis by polarized light microscopy. For samples less than 10% by area, additional analysis by point counting shall be performed. Sample results shall be submitted as an attachment to the asbestos compliance inspection report. Chain of custody documentation shall accompany all submitted asbestos samples.

N. Inspection reports shall include determinations of compliance for ch. NR 447 Wis. Adm. Code.

O. Inspection reports shall be written and submitted to the Central Office within 30 days, using Department Inspection Forms. Violations shall be verbally reported to the Department Asbestos Coordinator as soon as practical after discovery. The contractor and the Department Asbestos Coordinator shall then discuss the potential violations to determine the appropriate enforcement response. If enforcement action is taken, a secondary enforcement action request form and the needed attachments including the inspection report, sampling analysis report and photographic evidence shall be written and submitted to the department within 30 days of determining the appropriate enforcement response. If multiple inspections are warranted for a single project, only one report needs to be submitted. The initial inspection will be payable as an inspection. All follow-up inspections will be considered part of the initial inspection. If an excessive number of follow-up inspections are required, some of those inspections may be payable as separate inspections; this determination will be made by the Department Asbestos Coordinator.

P. Inspections shall be performed during actual abatement, prior to demolition for the presence of asbestos or during demolition, to be counted as a completed inspection. Times and dates of projects shall be supplied by the Department. All inspections shall be performed unannounced unless otherwise instructed by the contract administrator. For emergency situations, the Contractor may be requested to perform inspections within hours of notification.

Q. When alleged violations are discovered, at least two samples of suspected asbestos containing material shall be collected and chain of custody procedures shall be followed. Split samples should be offered upon request. Containers and chain of custody forms shall be supplied by the Department.

contract or for routine follow-up. The Department takes no responsibility for supervision or direction of the performance of the contract to be performed by the Contractor or the Contractor's employees or agents. The Department further agrees that it shall exercise no control over the selection and dismissal of the Contractor's employees or agents.

11. **LIABILITY.** The work to be performed under this contract is to be performed entirely at Contractor's risk. Contractor hereby assumes all liability with all work and all services to be provided by the Contractor under this contract.

12. **INSURANCE RESPONSIBILITY:** The contractor performing services for the State of Wisconsin shall:

    A. Maintain worker's compensation insurance for all employees engaged in the work.

    B. Maintain commercial liability and property damage insurance against any claim(s), which might occur in carrying out this agreement/contract. Minimum coverage shall be one million ($1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned, and hired vehicles that are used in carrying out the contract. Minimum coverage shall be one million ($1,000,000) per occurrence combined single limit for automobile liability and property damage.

    C. Provide an insurance certificate indicating this coverage, counter-signed by an insurer licensed to do business in Wisconsin, covering the period of the agreement/contract. The insurance certificate is required to be presented prior to issuance of the purchase order or before commencement of the contract.

    D. The state reserves the right to require higher or lower limits where warranted.

13. **NONDISCRIMINATION.** In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this nondiscrimination clause. Failure to comply with the conditions of this clause may result in the Contractor being declared an "ineligible" contractor, termination of the contract, or withholding of payment.

14. **AFFIRMATIVE ACTION.** If this contract is for an amount of twenty-five thousand dollars ($25,000) or more the Contractor agrees to submit a written affirmative action plan to the Department within 15 business days after the contract commences if an acceptable plan is not already on file with the State of Wisconsin. (Contractors with an annual work force of fewer than twenty-five employees are exempted from this requirement.) Failure to comply with the conditions of this clause may result in the Contractor being declared an "ineligible" contractor, termination of the contract, or withholding of payment.

15. **APPLICABLE LAW.** This contract shall be governed by the laws of the State of Wisconsin. The Contractor shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this contract.

16. **ANTITRUST ASSIGNMENT.** The Contractor and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, the Contractor hereby assigns to the Department any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

17. **PAYMENT TERMS AND INVOICING.** Payment shall be considered timely if the payment is mailed, delivered, or transferred by the later of the following:

R. Photographs of the abatement site shall be taken, including areas where samples are obtained, when alleged violations are discovered.

S. For pre-demolition asbestos inspections where friable asbestos containing material is discovered, the Department shall be notified immediately of findings.

T. The Contractor reserves the right to determine the potential health risk to employees for each asbestos project and determine the risk management necessary, including the level of involvement.

6. **PAYMENT.** The Contractor, for contract activities satisfactory to the Department, shall receive compensation based on the actual number of inspections performed and reports submitted.

A. The amount of reimbursement shall be $5,000 per contract period, payable quarterly for the inspections performed or when all inspections are completed. This amount is based on payment of $500.00 per inspection at 10 inspections per year. In the event that the contractor does not meet the required number of inspections, the final quarterly payment will be reduced by the number of outstanding inspections. If additional funding becomes available during this contract period, the number of inspections may be increased to include additional inspections.

B. A reasonable amount of follow-up is included in the payment. This may include attending Department enforcement conferences, or providing expert testimony. Payment beyond this amount shall be negotiated between the Department and the Contractor.

C. If the Contractor cannot, at the end of the contract year, meet the inspection commitment specified in par. 6A, an alternative action in lieu of conducting an inspection may be used to meet this commitment. Such an alternative action shall involve educating the public/private sector in the areas of asbestos abatement, health risks of asbestos and/or federal and state asbestos regulations. Such action shall be approved in writing by the Department prior to its implementation. Such an alternative shall be paid at the same rate as an inspection, i.e., $500 per alternative action.

7. **ENFORCEMENT PROCEEDINGS PARTICIPATION.** Each party recognizes that its employees, representatives or assigns may be needed to testify in enforcement proceedings initiated by the other party and related to the work described under this contract. The parties agree to such participation. Said participation would be without reimbursement for salary or expenses for the testifying party by the other party. However, if the situation is such that non-reimbursement would place an unreasonable burden on the testifying party, then the parties may enter into a separate contract or negotiated agreement for reimbursing the testifying party by the other party.

8. **RECORDS, ACCESS.** The Contractor shall, for a period of five (5) years after completion and acceptance by the Department, maintain books, records, documents and other evidence directly pertinent to performance on work under this contract in accordance with generally accepted accounting principles and practices. The Contractor shall also maintain the financial information and data used in the preparation or support of the cost submission in effect on the date of execution of this contract and a copy of the cost summary submitted to the Department. The Department and its agents, including the U.S.EPA and duly-authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. The Contractor shall provide proper facilities for such access and inspection. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such dispute, performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such dispute, appeal, litigation, claim or exception.

9. **CONFIDENTIALITY.** Subject to Wisconsin's Open Records Law, either party, at the request of the other party, shall take steps necessary to ensure confidentiality of records and complaints in the event that such confidentiality is necessary to guarantee un-compromised enforcement actions.

10. **INDEPENDENT CONTRACTOR.** The Department agrees that the Contractor shall have sole control of the method, hours worked, and time and manner of any performance under this contract other than as specifically provided herein. The Department reserves the right only to inspect the project site or premises for the purpose of insuring that the inspection has been completed in compliance with the

A. The date specified on a properly completed invoice for the amount specified in the order or contract, or

B. Within thirty (30) days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract or within thirty (30) days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later if the Department does not notify the sender of receipt of an improperly completed invoice within ten (10) working days after it receives the invoice of the reason it is improperly completed.

18. **TAXES.** The Department is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials. The State of Wisconsin has issued tax exempt number ES 40690 to the Department.

19. **TAX DELINQUENCY.** Contractors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

20. **ADDRESSES.** All correspondence, such as payments, shall be directed to the appropriate contact person listed below. Changes in the information listed below shall be forwarded to the other party when effective and will become part of this agreement without a formal amendment.

State of Wisconsin:
Department of Natural Resources
101 South Webster St., Box 7921
Madison, WI 53707-7921
ATTN: Amy Walden, AM/7
Phone: 608/266-3658
FAX: 608/267-0560

City of Menasha:
Health Department
140 Main St
Menasha, WI 54952
ATTN: Todd Drew, Public Health Inspector
Phone: 920/751-5119
FAX: 920/967-5273

21. **TITLES.** Paragraph headings are for ease of reference and not intended to have any meaning in themselves.

IN WITNESS WHEREOF, the parties by their signatures shall cause this contract to be executed.

Signed for and on behalf of: STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

Date 06-29-10 By: Matthew J. Frank
Title: Secretary

Signed for and on behalf of: CITY OF MENASHA
HEALTH DEPARTMENT

Date _____ By: _____

Title: _____

Approved

7-14-2010

City Attorney