



State of Minnesota

Joint Powers Agreement

SWIFT Contract Number: _____

This Agreement is between the State of Minnesota, acting through its Commissioner of Public Safety on behalf of the State Fire Marshal division ("State"), and the City of Saint Paul, acting on behalf of the Saint Paul Fire Department, 645 Randolph Avenue, Saint Paul, MN 55102 ("Governmental Unit"). The State and Governmental Unit may be referred to jointly as "Parties."

Recitals

Under Minnesota Statutes § 471.59, subd. 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of a Hazardous Materials Response Team ("Team") provide Incident Command technical expertise in hazard identification and emergency response in a pre-identified geographic area.

The Governmental Unit is qualified to provide Hazardous Materials Response Team services to the State and is empowered to provide such assistance under Minnesota Statutes § 471.59, subd. 10.

Agreement

1. Term of Agreement

- 1.1 **Effective Date:** July 1, 2022, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.
- 1.2 **Expiration Date:** June 30, 2027.

2. Agreement between the Parties

The Governmental Unit will:

- (a) Respond to hazardous material incidents occurring in the Governmental Unit's normal geographic area (*see Appendix C*), and, when requested by the State, the Governmental Unit's primary response area (*see Appendix A*) and secondary response area (*Appendix B*).
- (b) Respond to any response area in the State of Minnesota (*see Appendix B*) when directed to do so by the Commissioner (*Minnesota Rules Chapter 7514.0900, subpart 1*).
- (c) Coordinate on-scene emergency response operations of the Team with local, state and federal agencies, Indian tribes, and private response organizations through the Minnesota Incident Management System (*Minnesota Rules Chapter 7514.1800, subpart 1*).
- (d) Ensure Team members are in compliance with the initial, continuing education, and team training requirements (*Minnesota Rules Chapter 7514.0600, subparts 1 to 4*); and annually certify such compliance to the Commissioner (*Minnesota Rules Chapter 7514.0600, subpart 6*).
- (e) Ensure Team members are in compliance with medical requirements (*Minnesota Rules Chapter 7514.0600, subpart 7*); and annually certify such compliance to the Commissioner (*Minnesota Rules Chapter 7514.0600, subpart 7*).
- (f) Deploy Team personnel and equipment to hazardous materials incident(s) within fifteen (15) minutes from the time a decision is made to dispatch the Team (*Minnesota Rules, Chapter*

7514.0500). For purposes of this clause, the decision to dispatch the Team will be considered made at the time the Governmental Unit's point of contact as identified in *Appendix D* is notified by the State.

- (g) Ensure compliance with all other employer requirements established in *Minnesota Rules Chapter 7514.0600*.
- (h) Conduct a formal evaluation of the hazardous materials emergency response to an incident within thirty (30) days after termination of the Team's response (*Minnesota Rules Chapter 7514.1300*).
- (i) Submit a detailed report of the Team's response to an incident as required by *Minnesota Rules Chapter 7514.0900, subpart 7*; and as required by *Minnesota Rules, Chapter 7514.1700, subparts 1 and 3*; and take appropriate measures to identify to the State the responsible person of each incident, including responsible person's social security number or federal tax identification number.
- (j) Designate one (1) primary and one (1) alternate representative to the State's Hazardous Materials Emergency Response Team Program Advisory Committee (*see Appendix F*); require one or both representatives to attend all meetings convened by the Committee; and empower each representative to make recommendations to the Committee on behalf of the Governmental Unit.
- (k) Designate one (1) primary and one (1) alternate representative (*see Appendix F*) and require each representative to train in applying operating guidelines and other administrative procedures established and identified by the State's Hazardous Materials Emergency Response Team Program (*Minnesota Rules Chapter 7514.0700, subpart 2*); and require one or both representatives to instruct other Team members.
- (l) Maintain and store emergency response vehicle(s) and equipment, whether loaned to the Governmental Unit by the State or owned by the Governmental Unit, in proper working order and ready for response at all times, except as may be necessary for the performance of routine or necessary maintenance, repairs, or replacement. Governmental Unit must immediately notify the State whenever Governmental Unit is not available for emergency response as a result of such circumstances.
- (m) Submit claims for recoverable costs to the Commissioner as required by *Minnesota Rules Chapter 7514.1700, subparts 1 and 3*; and take all appropriate measures to identify to the State the responsible person of each incident, including responsible person's social security number or federal tax identification number.
- (n) Maintain the required composition of a Hazardous Materials Emergency Response Team, including the availability for immediate response of nine (9) members minimum certified to the levels of hazardous materials technician response and training. The State recommends maintaining a level of twelve (12) members for immediate response; and the Governmental Unit agrees to obtain approval from the State's Authorized Representative or his designee prior to deploying more than twelve (12) team members to an incident.
- (o) Respond to incidents and assist local authorities at the scene of a hazardous materials incidents by providing reasonable mitigation; and recommend to the local incident manager the best means of controlling the hazard after consideration of life safety concerns, environmental effects, exposure hazards, quantity and type of hazardous material, availability of resources, or other relevant factors.

The Governmental Unit shall not subcontract any work, duties or tasks pursuant to this Agreement.

3. Payment

3.1 **Consideration.** The State will pay for all services performed by the Governmental Unit under this Agreement as follows:

- (a) **Compensation.** The State will pay the Governmental Unit up to but not exceeding **Two Hundred Sixty Thousand and 00/100 Dollars (\$260,000.00)** for expenses incurred during each twelve-month period commencing July 1 and ending June 30 for the following costs:
 - 1) Capital equipment – Cost of capital equipment including vehicles.
 - 2) Training – Cost of training team personnel (excluding exercise training).
 - 3) Medical examinations – Cost of annual medical examinations for team personnel.
 - 4) Consumable supplies – Cost of consumable supplies.
 - 5) Administration – Cost of program administration.
 - 6) Maintenance – Cost of equipment maintenance.
- (b) Governmental Unit may deviate from its budget corresponding to the six categories identified in Clause 3.1(a), increasing and decreasing amounts between categories as needed with the exception of Category 5, Administration. The State and Governmental Unit mutually agree Administration costs shall not be increased more than 20% without prior written approval from the State's Authorized Representative.
- (c) **Total Obligation.** The total obligation of the State for all compensation to the Governmental Unit corresponding to Clause 3.1(a) shall not exceed **One Million, Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00)**.
- (d) **Emergency Response Reimbursement.** In addition to the Compensation identified in Clause 3.1(a) and Clause 3.1(c), the State will reimburse the Governmental Unit for reasonable and necessary expenses corresponding to and directly associated with the following costs incurred during an actual emergency response. Reimbursement costs corresponding to this section shall not exceed **Five Thousand and 00/100 Dollars (\$5,000.00)** for any single response unless authorized by the State's Authorized Representative.
 - 1) **Hazmat Team Personnel Costs**
An hourly rate per person, including wages and fringe benefits, for two (2) hours minimum per person, up to nine (9) persons [Note: See Clause 2(n) above]. Hourly rates will be determined by and in accordance with the Governmental Unit's collective bargaining agreement(s) corresponding to personnel.
 - 2) **Additional Wage Costs for Local Callback Personnel**
An hourly rate per person, including wages and fringe benefits, for two (2) hours minimum per person, up to nine (9) persons for hazmat team. Hourly rates will be determined by and in accordance with the Governmental Unit's collective bargaining agreement(s) corresponding to personnel.
 - 3) **Vehicle Operating Costs**
 - a) Hazardous Materials Response Teams shall be reimbursed up to \$150.00 per hour for operational costs associated with the State supplied Hazardous Materials Emergency Response apparatus.
 - b) Hazardous Materials Response Teams shall be reimbursed up to \$100.00 per hour for a hazmat support vehicle.
 - c) Any additional Hazardous Materials Response Team support apparatus shall be reimbursed up to \$100.00 per hour (must be approved prior to use by state fire marshal State Teams Coordinator or Supervisor).
 - 4) **Cost of Consumable Supplies Used**
Cost for consumable supplies used shall not exceed the actual costs incurred; and Governmental Unit must submit an itemized invoice for actual costs to be reimbursed.

- 5) **Costs of Repair or Replacement of Damaged or Destroyed Equipment**
Governmental Unit must submit an itemized invoice for actual costs incurred. If cost is estimated to exceed \$500.00, Governmental Unit shall consult with the State's Authorized Representative to determine if the State will require competitive bids or quotes prior to the repair or replacement of equipment. If the State requires a competitive solicitation, Governmental Unit must comply with the applicable municipal bidding laws.
- 6) **Communication Costs, including Long Distance and Cellular Telephone Charges**
Eligible costs are defined as cellular/mobile and land line telephone costs for voice, data, and facsimile transmissions. Governmental Unit must submit an itemized invoice for actual costs incurred.
- 7) **Administrative Costs Directly Resulting from the Emergency Response**
Up to \$500.00 per incident based on actual costs incurred. Governmental Unit may request additional administrative cost reimbursement based on an itemized invoice for actual costs incurred when extraordinary circumstances resulting from a specific State authorized emergency response are documented.
- 8) **Costs Incurred in the Use of Special Equipment (*Minnesota Rules Chapter 7514.1200*)**
Costs for this item shall not exceed the actual costs incurred; and Governmental Unit must submit an itemized invoice for actual costs to be reimbursed.
- 9) **Costs Associated with Providing Support to Cleanup Operations (*Minnesota Rules Chapter 7514.0900, subpart 5*)**
Costs for this item shall not exceed the actual costs incurred; and Governmental Unit must submit an itemized invoice for actual costs to be reimbursed.
- 10) **Costs Associated with Providing Standby Technical Assistance (*Minnesota Rules Chapter 7514.1600, subpart 4*)**
Costs for this item shall not exceed the actual costs incurred; and Governmental Unit must submit an itemized invoice for actual costs to be reimbursed.
- 11) **Other Direct Costs Incurred by the Governmental Unit as a Result of the Emergency Response**
Costs for this item shall not exceed the actual costs incurred; and Governmental Unit must submit an itemized invoice for actual costs to be reimbursed.

3.2 Payment.

- (a) **Invoices.** The State will promptly pay the Governmental Unit after the Governmental Unit presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:
 - 1) **Governmental Unit Compensation [Clauses 3.1(a) and 3.1(b)].** Governmental Unit shall submit a completed Governmental Unit Compensation Packet at least once every three months but not more frequently than once per month for reimbursement of costs identified in Clauses 3.1(a) and 3.1(b). Governmental Unit shall submit a final invoice, complete with receipts and justifying information, for each twelve-month period of this Agreement no later than July 31 of each year. The State will process properly completed Reimbursement Packets for compensation within thirty (30) days of receipt.
 - 2) **Emergency Response Reimbursement [Clause 3.1(d)].** Governmental Unit shall submit a reimbursement claim form identifying reasonable and necessary expenses incurred during an actual emergency response, such claim form to be submitted to State no later than forty-five (45) days after the end of the response. The claim for reimbursement must be made on forms provided by the State and

must provide sufficient detail corresponding to each category identified in Clause 3.1(d). The State will process properly completed claim forms for reimbursement within thirty (30) days of receipt.

4. **Authorized Representatives**

The State's Authorized Representative is the person below, or his successor. The State's Authorized Representative, including his designees identified in *Appendix E*, has the responsibility to monitor the Governmental Unit's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, the State's Authorized Representative or his designee will certify acceptance on each invoice submitted for payment.

Name: James G. Smith, Fire Marshal, State Fire Marshal Division
Address: Department of Public Safety
445 Minnesota Street, Suite 145
Saint Paul, MN 55101
Telephone: 651.201.7402
Email Address: james.g.smith@state.mn.us

The Governmental Unit's Authorized Representative is the person below, or his successor. If the Governmental Unit's Authorized Representative changes at any time during this Agreement, the Governmental Unit must immediately notify the State in writing/email.

Name: Barton (Butch) Inks, Fire Chief
Address: Saint Paul Fire Department
645 Randolph Avenue
Saint Paul, MN 55102
Telephone: 651.224.7811
Email Address: barton.inks@ci.stpaul.mn.us

5. **Assignment, Amendments, Waiver, and Contract Complete**

- 5.1 **Assignment.** The Governmental Unit may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors.
- 5.2 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.
- 5.3 **Waiver.** If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 5.4 **Agreement Complete.** This Agreement contains all negotiations and agreements between the State and the Governmental Unit. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6. **Liability**

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other party's actions and consequences of those actions. The Minnesota Torts Claims Act, Minn. Stat. § 3.736 and other applicable laws govern the State's liability. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws, governs the Governmental Unit's liability.

7. State Audits

Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Agreement.

8. Government Data Practices

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Governmental Unit or the State.

If the Governmental Unit receives a request to release the data referred to in this clause, the Governmental Unit must immediately notify and consult with the State's Authorized Representative as to how the Governmental Unit should respond to the request. The Governmental Unit's response to the request shall comply with applicable law.

9. Venue

Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

10. Termination

10.1 Termination. The State or the Governmental Unit may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

10.2 Termination for Insufficient Funding. The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Governmental Unit. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Governmental Unit will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Governmental Unit notice of the lack of funding within a reasonable time of the State's receiving that notice.

11. E-Verify Certification (in accordance with Minn. Stat. § 16C.075)

For services valued in excess of \$50,000, the Governmental Unit certifies that as of the date of services performed on behalf of the State, Governmental Unit and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. The Governmental Unit is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

12. Counterparts

The Parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

13. Electronic Signatures

The parties agree that the electronic signature of a party to this Agreement shall be valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

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1. State Encumbrance Verification

*Individual certifies that funds have been
encumbered as required by Minn. Stat. §§
16A.15 and 16C.05*

Print Name: _____

Signature: _____

Title: _____ Date: _____

SWIFT PO No. _____

2. Governmental Unit: City of Saint Paul

Print Name: _____

Signature: _____

Title: Fire Chief Date: _____

Print Name: _____

Signature: _____

Title: Finance Director Date: _____

Approved as to form:

Print Name: _____

Signature: _____

Title: Assistant City Attorney Date: _____

**3. Department of Public Safety; State Fire
Marshal**

With delegated authority

Print Name: _____

Signature: _____

Title: _____ Date: _____

4. Commissioner of Administration

As delegated to the Office of State Procurement

Print Name: _____

Signature: _____

Title: _____ Date: _____

Admin ID: _____

APPENDIX A

PRIMARY RESPONSE AREA

The Governmental Unit's primary response area is described as follows:

The entire Minnesota counties of: Ramsey; Washington; and Dakota.

APPENDIX B

SECONDARY RESPONSE AREA

The Governmental Unit's secondary response area is described as follows:

The entire State of Minnesota.

APPENDIX C

NORMAL GEOGRAPHIC JURISDICTION

The Governmental Unit's normal geographic jurisdiction is described as follows:

The corporate limits of the City of Saint Paul, Minnesota.

APPENDIX D

POINT OF CONTACT FOR TEAM DISPATCHING

The Governmental Unit's single point-of-contact for purposes of State Hazardous Materials Response Team dispatching is:

Ramsey County Emergency Communications Center

Telephone Number: 651.266.7702

Secondary

Duty Deputy Chief: 651-228-6214

24-hour emergency telephone number: 651.266.7702 or 651.291.1111

APPENDIX E

DESIGNEES OF STATE'S AUTHORIZED REPRESENTATIVE

State's Authorized Representative:

James G. Smith, Fire Marshal

Designees of State's Authorized Representative:

John Kreuser, State Emergency Response Teams Coordinator

John Ehret, Fire Service Supervisor

Amanda Swenson, Chief Deputy

Authority of Designees:

Clause 3, Section 3.1(b)

Authorization to approve increase of Governmental Unit's budgeted administration costs more than 20%

Clause 3, Section 3.1(d)

Authorization to approve "Emergency Response Reimbursement" claims in excess of \$5,000.00

Clause 4

Authorization to certify (approve) acceptance on each invoice submitted by Governmental Unit corresponding Clause 3, Section 3.1(a), Compensation

Clause 4

Authorization to certify (approve) acceptance on each claims form submitted by Governmental Unit corresponding to Clause 3, Section 3.1(d), Emergency Response Reimbursement

Clause 8

**Authorization to give instructions to the
Governmental Unit concerning release of data to a
requesting third party prior to the data being
released**

**The undersigned hereby delegates the authorities listed above to those persons identified as
Designees of State's Authorized Representative. These authorities are delegated until revoked
in writing.**

By: _____

Date: _____

**James G. Smith
State Fire Marshal**

APPENDIX F

PRIMARY AND ALTERNATE REPRESENTATIVES TO THE HAZARDOUS MATERIALS EMERGENCY RESPONSE TEAM

The Governmental Unit's primary and alternate representatives to the Hazardous Materials Regional Response Team are:

Primary Representative:

Mike Gaede

Telephone Numbers: 651.228.6212 (work); 715.497.6590 (mobile)

Email Address: Micheal.Gaede@ci.stpaul.mn.us

Alternate Representative:

Tony Farina

Telephone Number: 651-228-6259 (work); 952-826-9990 (mobile)

Email Address: Anthony.farina@ci.stpaul.mn.us