

Exhibit A



Joint Powers Agreement State of Minnesota

SWIFT Contract Number: 134779

This Agreement is between the State of Minnesota, acting through its Commissioner of Public Safety on behalf of the Homeland Security and Emergency Management division ("State"), and the City of Duluth, acting on behalf of the Duluth Fire Department, 602 West Second Street, Duluth, MN 55802 ("Governmental Unit").

Recitals

Under Minnesota Statutes § 471.59, subdivision 10, and 2017 Minnesota Law Chapter 95, Article 1, Section 11, subdivision 2(b), the State is empowered to engage such assistance as deemed necessary. The State is in need of professional/technical services from pre-identified, regionally located emergency response teams to assist local authorities in protecting the public's safety.

Agreement

1 Term of Agreement

- 1.1 **Effective Date.** **July 1, 2017**, or the date the State obtains all required signatures under Minnesota Statutes § 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration Date.** **June 30, 2019**, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2 Agreement Between the Parties

The Governmental Unit will:

- a) Respond to hazardous materials incidents occurring within the Governmental Unit's primary and secondary response areas when requested by the State.
- b) Respond to any response area within the State of Minnesota when directed to do so by the Commissioner of Public Safety (*Minnesota Rules, Chapter 7514.0900, subpart 1*).
- c) Coordinate on-scene emergency response operation of the teams 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 established in *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 the medical requirements established in *Minnesota Rules, Chapter 7514.0600, subpart 7*.
- f) Deploy team personnel and equipment to a hazardous materials incident within an average of 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 for purposes of dispatching the team 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 team's response to each incident as required by *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*, 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 Regional Response Team Program Advisory Committee, 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 and require each representative to train in applying operating guidelines and other administrative procedures established and identified by the State's Hazardous Materials Regional Response Team Program (*Minnesota Rules, Chapter 7514.0700, subpart 2*), and require one or both representatives to instruct other emergency response team members.
- l) Maintain and store emergency response vehicles 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, as required by *Minnesota Rules, Chapter 7514.0800, subpart 1*, a team composition of at least thirty (30) qualified members with twelve (12) of the team members available for response at all times. Nine (9) of the twelve (12) members must be available as an emergency response team, and three (3) of the twelve (12) members be available as a chemical assessment team.
 - o) Respond to incidents and assist local authorities at the scene of a hazardous materials incident by providing simple 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 (*Minnesota Rules, Chapter 7514.0900*).
 - p) Respond to incidents as an emergency response team to assess an incident, develop and recommend mitigation strategies, and assist with response operations (*Minnesota Rules, Chapter 7514.0900, subpart 4*).
- 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:

- State Fiscal Year 2018 commencing July 1, 2017 and ending June 30, 2018: Up to but not exceeding **Two Hundred Twenty Five Thousand and 00/100 Dollars (\$225,000.00)**; and
- State Fiscal Year 2019 commencing July 1, 2018 and ending June 30, 2019: Up to but not exceeding **Two Hundred Twenty Five Thousand and 00/100 Dollars (\$225,000.00)**.

The total obligation of the State under this agreement will not exceed **Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00)**.

3.2 Payment.

- a) **Invoices.** The State will promptly pay the Governmental Unit after the Governmental Unit presents an itemized invoice and the State's Authorized Representative accepts the invoiced services.

Governmental Unit shall submit one (1) invoice for each calendar quarter no later than thirty (30) calendar days following the end of the quarter. For example, the Governmental Unit shall submit one (1) detailed invoice no later than April 30, 2018 for reimbursement of allowable expenses incurred January 1, 2018 through March 31, 2018.

Governmental Unit shall submit the last invoice to the State no later than July 30, 2019.

4 Authorized Representatives

The State's Authorized Representative is the designated individual below, or his successor, and 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 will certify acceptance on each invoice submitted for payment.

Name: Rick Luth, State Emergency Response Teams Coordinator
Address: Department of Public Safety; Homeland Security and Emergency Management
445 Minnesota Street
St. Paul, MN 55101
Telephone: 651.201.7425
E-mail Address: rick.luth@state.mn.us

The Governmental Unit's Authorized Representative is the designated individual 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.

Name: Dennis Edwards, Fire Chief
Address: Duluth Fire Department
602 West Second Street
Duluth, MN 55802
Telephone: 218.730.4390
E-mail Address: dedwards@DuluthMN.gov

5 Assignment, Amendments, Waiver, and Agreement 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 same parties who executed and approved this agreement, or their successors in office.
- 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 same parties who executed and approved the original agreement, or their successors in office.
- 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 shall be responsible for its own acts and behavior and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes § 3.736, and other applicable laws govern the State's liability. The Minnesota Municipal Tort Claims Act, Minnesota Statutes §§ 466.01-466.15, and other applicable laws govern the Governmental Unit's liability.

7 State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the Governmental Unit's books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this agreement.

8 Government Data Practices

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 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 agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this clause 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 the State. The State will give the Governmental Unit instructions concerning the release of the data to the requesting party before the data is released.

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 email 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, 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. 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 Governmental Unit and made available to the State upon request.

12 Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)

The following term applies to any agreement for which the value, including all extensions, is \$50,000 or more: Governmental Unit certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Governmental Unit's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statute §§ 16A.15 and 16C.05.

Signed: _____

Date: _____

3. DEPARTMENT OF PUBLIC SAFETY

By: _____
(with delegated authority)

Title: _____

Date: _____

SWIFT Purchase Order No.: **3000051425**

2. GOVERNMENTAL UNIT: CITY OF DULUTH

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

4. COMMISSIONER OF ADMINISTRATION

As delegated to the Office of State Procurement

By: _____

Date: _____