



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 Duluth, acting on behalf of the Duluth Fire Department, 602 West Second Street, Duluth, MN 55802 ("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 an 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 Eighty Five Thousand and 00/100 Dollars (\$285,000.00)** 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, Four Hundred Twenty Five Thousand and 00/100 Dollars (\$1,425,000.00)**.
- (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 four (4) 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 four (4) hours minimum per person, up to nine (9) persons for a 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/her 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: Shawn Krizaj, Fire Chief
Address: Duluth Fire Department
602 West 2nd Street
Duluth, MN 55802
Telephone: 218.730.4390
Email Address: skrizaj@DuluthMN.gov

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. **Indemnification.**

- 6.1 In the performance of this Agreement, the Indemnifying Party must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Indemnifying Party's:
 - Intentional, willful, or negligent acts or omissions; or
 - Actions that give rise to strict liability; or

- Breach of contract or warranty.

The Indemnifying Party is defined to include the Governmental Unit, the Governmental Unit's reseller, any third party that has a business relationship with the Governmental Unit, or Governmental Unit's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Agreement.

6.2 Nothing within this Agreement, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

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/VerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

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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

Print Name: _____

Signature: _____

Title: _____ 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: The entire Minnesota counties of: Carlton; Cook; Lake; and Pine. In Saint Louis County: all areas South of State Highway 1.

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 Duluth, 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:

St. Louis County Dispatch

24 Hour Fire Dispatch (218)625-3588

24 Hour General Dispatch (218)625-3581

Alternate:

Duluth Fire Dept. / Assistant Chief

(218)730-4391

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:

Shawn Krizaj

Telephone Numbers: (218)730-4390

Email Address: skrizaj@DuluthMN.gov

Alternate Representative:

Rob Morehouse

Telephone Number: 218-730-4395

Email Address: rmorehouse@duluthmn.gov