

Document A



State of Minnesota

Joint Powers Agreement

SWIFT Contract Number: 223290

This Joint Powers Agreement ("Agreement") is between the State of Minnesota, acting through its Commissioner of the Department of Employment and Economic Development ("State") and the City of Duluth, Minnesota ("Governmental Unit").

Recitals

Under Minn. Stat. § 471.59, subd.10, the State is empowered to engage such assistance as deemed necessary.

Under Minn. Stat. §§ 116J.035, subd. 1(a)(6), 116J.401, subd. 2(a)(8), 268A.03(9) and (10), the State is empowered to enter into contracts for the purpose of administering the Wagner-Peyser Act, the Workforce Investment Act, and other federal employment and training programs; cooperate with other public or private agencies or organizations for the purpose of vocational rehabilitation; enter into contractual arrangements with instrumentalities of local government with respect to providing vocational rehabilitation.

In accordance with 34 CFR 463.760, the shared costs borne by the State are determined to be in proportion to the benefits received.

The State is in need of weekly required reception and career lab duty services in addition to site management services at the Duluth CareerForce location.

Agreement

1. Term of Agreement

- 1.1 Effective Date: Upon execution on the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2.
- 1.2 Expiration Date: March 31, 2023, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2. Agreement between the Parties

The Governmental Unit will provide weekly required reception and career lab duties, as well as associated site management services at the Duluth CareerForce location.

3. Payment

The State will pay the Governmental Unit as outlined below:

CareerForce Location	Service	Cost Per Hour	VRS share per IFA (hours/week)	Total cost per week
Duluth	Reception	\$52.36	9.96	\$521.51

CareerForce Location	Service	Cost Per Hour	VRS share per IFA (hours/week)	Total cost per week
Duluth	Career Lab	\$52.36	2.09	\$109.43
Duluth	Site Management	\$5.23	12.05	\$63.02
Duluth Total Cost per Week				\$693.96

The Governmental Unit will invoice the State on a monthly basis. The monthly invoices should be sent to keith.deckert@state.mn.us and the State will pay for services upon completion and acceptance of the same.

The total obligation of the State under this Agreement will not exceed \$9,021.48.

4. Authorized Representatives

The State's Authorized Representative is Dee Torgerson, Director, Vocational Rehabilitation Services, or his/her successor, with a business address of First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101 and a business email address of dee.torgerson@state.mn.us.

The Governmental Unit's Authorized Representative is Elena Foshay, Director, Workforce Development Department, or his/her successor, with a business address of 402 W. 1st Street, Duluth, MN 55802 and a business email address of efoshay@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 Contract 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 Agreement, and to all terms subsequently added, without regard to order of precedence.

7. Joint Venture.

The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

8. 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.

9. Government Data Practices.

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) 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 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.

10. Governing Law, Jurisdiction, and Venue.

Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. 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.

11. Termination

11.1 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.

11.2 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.

12. 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 Governmental Unit and made available to the State upon request.

13. Force Majeure.

Neither party shall be responsible to the other or considered in default of its obligations within this Agreement to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

14. Civil Rights Assurances.

The Governmental Unit and State, as part of the consideration under this Agreement, do hereby covenant and agree that:

14.1 No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participate in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.

14.2 That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

15. Severability.

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

16. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against a party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in portable document format (".pdf"), or by any other electronic means which preserves the original graphic and pictorial

appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

[Remainder of page intentionally blank. Signature page follows.]

1. State Encumbrance Verification

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

Print Name: Timisha Barnes
Signature: Timisha Barnes
Title: MA Date: 1/10/23

SWIFT Contract No. 223290 PR;74920 PO;3-500053

2. Governmental Unit

Print Name: _____
Signature: _____
Title: Mayor Date: _____

Attest:

City Clerk
Date Attested: _____
Countersigned:

City Auditor
As to form:

City Attorney

3. State Agency

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

[Signature page to Joint Powers Agreement.]