

# RESOLUTION CITY OF SAINT PAUL, MINNESOTA

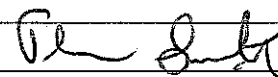
Presented by \_\_\_\_\_

1 RESOLVED, that the City of Saint Paul, Police Department is authorized to enter into the attached Joint  
2 Powers Agreement with the State of Minnesota, Department of Public Safety which includes an  
3 indemnification clause. The State of Minnesota has received an appropriation to purchase DataMaster  
4 DMT-G with Fuel Cell Option breath test instruments. The State of Minnesota will provide the Saint Paul  
5 Police Department with the breath test instrument to assist in enforcing Minnesota laws and local  
6 ordinances relating to traffic safety.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

|            | Yeas | Nays | Absent |
|------------|------|------|--------|
| Benanav    |      |      |        |
| Bostrom    |      |      |        |
| Harris     |      |      |        |
| Helgen     |      |      |        |
| Lantry     |      |      |        |
| Montgomery |      |      |        |
| Thune      |      |      |        |

Requested by Department of:  
Police

By: 

Form Approved by City Attorney  
By: \_\_\_\_\_

Adopted by Council: Date \_\_\_\_\_

Adoption Certified by Council Secretary

By: \_\_\_\_\_

Approved by Mayor: Date \_\_\_\_\_

By: \_\_\_\_\_

Form Approved by Mayor for Submission to Council

By: \_\_\_\_\_

**MN DEPARTMENT OF PUBLIC SAFETY**  
**DATAMASTER DMT-G WITH FUEL CELL OPTION**  
**EVIDENTIAL BREATH TESTER INSTRUMENT AGREEMENT**  
(DISTRIBUTION OF EQUIPMENT TO LAW ENFORCEMENT AGENCIES)  
Contract # **BCA-DMT-0171**

THIS JOINT POWERS AGREEMENT, by and between the State of Minnesota, acting through its Commissioner of Public Safety, Bureau of Criminal Apprehension, Forensic Science Laboratory (hereinafter referred to as the STATE) and **St. Paul Police Department** (hereinafter referred to as the GOVERNMENTAL UNIT) witness that:

WHEREAS, the STATE has received an appropriation to purchase DataMaster DMT-G with Fuel Cell Option breath test instruments and is authorized to distribute DataMaster DMT-G with Fuel Cell Option breath test instruments to criminal justice agencies and/or city, county, or political subdivisions; and

WHEREAS, the GOVERNMENTAL UNIT represents that it is a criminal justice agency, or is a city, county, or political subdivision authorized to accept equipment/services from the STATE for the purpose specified herein; and

WHEREAS, the GOVERNMENTAL UNIT represents that it is duly qualified and willing to perform and carry out the services and tasks described in this Agreement.

NOW, THEREFORE, it is agreed:

I. STATE'S RESPONSIBILITIES.

- A. The STATE will provide GOVERNMENTAL UNIT with a DataMaster DMT-G with Fuel Cell Option breath test instrument ("instrument"), which includes a DataMaster DMT-G with Fuel Cell Option, initial dry gas cylinder, a keyboard, a keyboard carrel, a printer with a toner cartridge, and mouthpieces for use as specified under Clause II of this Agreement. The GOVERNMENTAL UNIT will use and have possession of the instrument; but the STATE shall retain legal ownership of the instrument.
- B. Any and all repairs shall be made by or at the direction of the STATE. If funding is available, the STATE will pay for the cost of maintenance and repair, or replacement due to normal wear and tear resulting from routine, proper use of the instrument.
- C. The STATE will maintain all necessary state and federal inventory control records on these instruments.

II. GOVERNMENTAL UNIT RESPONSIBILITIES.

- A. The GOVERNMENTAL UNIT will use the instrument specified above to assist in enforcing Minnesota laws and local ordinances relating to traffic and highway safety and for other law enforcement applications.
- B. The GOVERNMENTAL UNIT will keep and maintain the instrument provided by the STATE in proper operating condition. The GOVERNMENTAL UNIT will also be responsible for any and all costs of repairing or replacing the instrument that is lost or damaged due to misuse or abuse.
- C. The GOVERNMENTAL UNIT will provide and maintain all disposable and consumable components originally provided by the STATE, such as DataMaster DMT-G with Fuel Cell Option mouthpieces, dry gas cylinders, printer toner cartridges, and paper and will supply all other necessary disposable and consumable components not provided by the STATE at the

GOVERNMENTAL UNIT'S expense.

- D. The GOVERNMENTAL UNIT will make this instrument available for use by any breath test operator certified by the STATE.
- E. The GOVERNMENTAL UNIT will not permit the instrument to be operated or tampered with by individuals who are not trained in its operation and certified by the STATE as DataMaster DMT-G with Fuel Cell Option operators.
- F. The GOVERNMENTAL UNIT will make the instrument available to STATE authorized personnel when required for inventory or inspection purposes.

III. TERMS OF AGREEMENT.

This Agreement shall be effective on January 1, 2011 or upon the date that the final required signature is obtained by the STATE, pursuant to Minn. Stat. § 16C.05, Subdivision 2, whichever occurs later, and shall remain in effect until the instrument is no longer used and supported by the STATE or until terminated by either of the parties as provided in Clause IV below, whichever occurs first.

At the end of this Agreement, the STATE will notify the GOVERNMENT UNIT if they are required to return the instrument to the STATE.

IV. TERMINATION

This Agreement may be terminated by either the STATE or GOVERNMENTAL UNIT at any time, with or without cause, upon ten (10) days written notice to the other party. The instrument must be returned to the STATE within 30 days of the termination date, and if the GOVERNMENTAL UNIT fails to return the instrument within this time period the GOVERNMENTAL UNIT agrees to pay the STATE the cost of replacing the instrument and payment will be made to the STATE within 30 days of receipt of invoice.

V. STATE'S AUTHORIZED REPRESENTATIVE

The STATE'S authorized representative agent for the purposes of this Agreement is Frank C. Dolejsi, or his designee, Department of Public Safety, Bureau of Criminal Apprehension, Forensic Science Laboratory, 1430 Maryland Avenue East, St. Paul, MN 55106. Such representative will have final authority for acceptance of the GOVERNMENTAL UNIT'S services.

VI. ASSIGNMENT

GOVERNMENTAL UNIT shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent from the STATE.

VII. LIABILITY

GOVERNMENTAL UNIT shall indemnify, save and hold the STATE, its agents and employees, harmless from any claims or causes of action, including all attorneys' fees incurred by the STATE, arising from the performance of this Agreement by GOVERNMENTAL UNIT or GOVERNMENTAL UNIT'S agents or employees. This clause will not be construed to bar any legal remedies GOVERNMENTAL UNIT may have for the STATE'S failure to fulfill its obligations pursuant to this Agreement. GOVERNMENTAL UNIT'S liability shall be governed by the provisions of the Municipal Tort Claims Act, Minnesota Statutes, Section 466.01-466.15 and other applicable law.

VIII. STATE AUDIT

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, and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

**IX 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed intending to be bound thereby.

**APPROVED**

|   |   |
|---|---|
| <p><b>2. GOVERNMENTAL UNIT</b><br/>         Governmental Unit certifies that the appropriate person(s) have executed this Agreement on behalf of Governmental Unit as required by applicable articles, by-laws, resolutions, or ordinances.</p> | <p><b>3. DEPARTMENT OF PUBLIC SAFETY</b></p>      |
| <p>By:<br/>         Title:<br/>         Date:</p>   | <p>By:<br/>         Title:<br/>         Date:</p> |
| <p>By:<br/>         Title:<br/>         Date:</p>   |   |
| <p><b>1. State Encumbrance Verification</b></p>   | <p><b>4. DEPARTMENT OF ADMINISTRATION</b></p>     |
| <p>No encumbrance required.<br/>         By:<br/>         Date:</p>   | <p>By:<br/>         Date:</p>                     |