

JOINT POWERS AGREEMENT BETWEEN THE CITY OF SAINT PAUL AND
THE CITY OF FALCON HEIGHTS

THIS JOINT POWERS AGREEMENT (the "Agreement"), is made and entered into effective as of this _____ day of _____, 2021 by and between the City of Falcon Heights (hereinafter called "**Falcon Heights**"), a Minnesota municipal corporation, whose principal office is located at 2077 West Larpenteur Avenue, Falcon Heights, Minnesota 55113, and the City of Saint Paul, through its Saint Paul Fire Department (hereinafter called "**Saint Paul**"), a Minnesota municipal corporation, whose principal office is located at 15 West Kellogg Boulevard, Saint Paul, Minnesota 55102, Falcon Heights and Saint Paul are hereinafter collectively called the "**Cities**".

WHEREAS, Falcon Heights intends to engage Saint Paul's Fire Department (the "**Fire Department**") to provide Fire and the Hazardous Materials Response Team Services to all of Falcon Heights; and

WHEREAS, the Cities are authorized under Minnesota Statutes, section 471.59 to cooperatively exercise their commonly held powers and an aid agreement is critical to providing and supporting emergency services; and

WHEREAS, Saint Paul through the Fire Department is willing and able to provide the year- round services and equipment desired by Falcon Heights when requested.

NOW, THEREFORE, subject to the terms and conditions set forth below, Falcon Heights and Saint Paul agree as follows:

SECTION 1. Definitions.

1. **Emergency** means fires, medical, rescues, drowning(s), building damages, cave-ins, accidents, explosions, disaster response, or other types of incidents which a fire department would respond to for the protection of life, health, and property. This term shall be interpreted broadly to effect the purpose of this Agreement.
2. **Fire Chief** means the Chief of the Saint Paul Fire Department.
3. **Fire Fighting Services** means those services directed at rescue, fire suppression, property conservation or special operations involving individuals, buildings on property involved in a fire or other emergency.
4. **Fire Preventative Services** means those services directed at fire cause investigation and determination, pre-fire planning, hazard identification and elimination, public education and other activities intended to proactively improvement the safety of life and property.

5. *Hazardous Materials Response Services* means those services directed at the identification, isolation, mitigation or removal of hazardous materials.

SECTION 2. Scope of Services from Saint Paul.

A. Services.

The Fire Department will provide the following services to Falcon Heights pursuant to the terms and conditions set forth herein:

1. Fire Fighting Services and Fire Prevention Services from Saint Paul Fire Stations as needed in the performance of the services described herein, including mutual aid services as deemed necessary by situation.
2. Hazardous Materials Response Services of the Saint Paul Hazardous Materials Response Team.

B. Equipment.

The Fire Department will provide all personnel and equipment that they have available in Saint Paul that may be required to perform the above services.

1. The Fire Chief, or, in case of his absence or disability, the person in active charge of the Fire Department, may in his discretion retain in Saint Paul such equipment and personnel as may in his opinion be necessary for the proper and adequate protection of Saint Paul, and will dispatch for the protection of Falcon Heights only such personnel and equipment in response to the request for services by authorized persons as in his opinion can for the time being be safely spared from Saint Paul.
2. In case an emergency arises within Saint Paul while the equipment and personnel of the Fire Department are engaged in fighting a fire for Falcon Heights, the Fire Chief or other person in active charge of the department may in his discretion recall to Saint Paul from the service of Falcon Heights such equipment and personnel as he may in his opinion consider necessary to meet said emergency. The determination of the Chief or the active head of the department as to what equipment shall be furnished or withdrawn, as provided herein, will be final and conclusive.
3. Notwithstanding the above, in the exercise of discretion regarding the

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personnel and equipment available for services in Falcon Heights, the Fire Chief or designee will use best effort to ensure that the level of service provided in Falcon Heights is comparable to that provided by the Fire Department in Saint Paul.

C. Reports/Annual Meeting.

The Fire Department will provide Falcon Heights a quarterly report of 911 Responses to Falcon Heights. The report will include numbers and purpose of calls, building/property involved, and result of call/response.

If Falcon Heights desires specific patient care reports for risk management or insurance purposes, Falcon Heights may request that the patient obtain the report from Saint Paul. Falcon Heights will not receive patient care reports directly from the Fire Department.

The St. Paul Fire Chief and the Falcon Heights City Administrator shall hold at least one meeting annually during term of this contract at least 120 days before its anniversary date to discuss Falcon Heights's satisfaction with the service provided during the year, and to discuss such other issues as either party deems relevant to this contract.

D. Chain of Command.

The chain of command for purposes of making emergency decisions in incidents relating to fire and hazardous materials services provided by Saint Paul pursuant to this Agreement will be as follows when Saint Paul staff are in Falcon Heights providing such services:

1. The Fire Department will implement the Incidental Command System (ICS) as per department procedures.
2. The Fire Department will respond with an Incident Commander who holds the title of either District Chief, Deputy Chief or Assistant Chief of Operations.
3. Falcon Heights will provide a city representative for large scale events to communicate with the Fire Department.

SECTION 3. Obligations of Falcon Heights.

1. Falcon Heights will provide any additional City services necessary for response to an Emergency outside of the fire services provided by Saint Paul, including but not limited to:
 - a. Any required Public Works services;

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- b. Any required Police services;
- c. Any required Code Enforcement/Safety and Inspections services; and
- d. General emergency management needs.

Falcon Heights will coordinate any required water services with St. Paul Regional Water Services.

A. Information.

Falcon Heights will provide necessary information related to the fire services upon written request by Saint Paul or, in the case of an Emergency, as promptly as reasonably possible after any request.

A. Request For Services.

A call for an Emergency in Falcon Heights shall be received by the Ramsey County Public Safety Answering Point (PSAP) at the Ramsey County Emergency Communication Center (RCECC) and will be routed to the Fire Department. The Fire Department shall coordinate with RCECC to provide the Fire Department the following information, as available, at the time of the request to Saint Paul for services.

1. A description of the incident, including what happened, the time, the type of materials involved, if any, the geographic area, and any other detail which may be helpful; and
2. A description of the most favorable response route to minimize the response time.

B. Incident Risk Management.

At the request of the Incident Commander, Falcon Heights may provide, at its option and at its own expense, one or more of the following:

1. Crowd Control;
2. Evacuation of the site and surrounding area, as necessary;
3. Site Security (during and post-incident);
4. Heavy equipment;
5. Diking material (as required by scope of incident); and
6. Hazardous Materials recovery by private contractor, if necessary.

C. Assistance with Recruitment.

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Falcon Heights agrees to assist Saint Paul in the recruitment of Department personnel. Assistance may include providing notice to residents of Falcon Heights of employment opportunities via electronic and print media, providing opportunities at Falcon Heights community events for the Department to disseminate the information or otherwise as may be mutually agreeable to the parties.

SECTION 4. Term.

A. Term.

This Agreement shall commence on _____, 2021 and shall remain in full force for a period of one year from that date, expiring on _____, 2023, unless terminated earlier pursuant to the terms of this Agreement.

B. Renewal.

After expiration of the initial two year term, this Agreement shall automatically renew for successive periods of one year unless either party provides written notice to the other as provided in Section 11 of this Agreement

SECTION 5. Contacts/Authorized Agents for Services Provided.

Falcon Heights's contact person/liaison officer and authorized agent for Emergency services to be provided pursuant to this Agreement is City Administrator.

Saint Paul's contact person/liaison officer and authorized agent for Emergency services to be provided pursuant to this Agreement is the Fire Chief.

SECTION 6. Compensation and Billing.

A. Compensation.

1. Falcon Heights agrees to compensate Saint Paul at a rate of \$165,000.00 for fire and hazardous materials response team services performed under this Agreement for the first year. The amount of compensation paid by Falcon Heights each subsequent year will increase by 2.25%.
2. Saint Paul may request additional administrative cost compensation based on an itemized invoice for actual costs incurred when extraordinary circumstances result from a specific Falcon Heights authorized hazardous emergency response and such costs are authorized by Falcon Heights in writing in advance.

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3. Saint Paul will be responsible for and pay, when due, all taxes and other withholdings due on compensation paid to employees of Saint Paul.
4. Saint Paul will accept no income, payment, or compensation of any kind from any third party in connection with or related in any way to the provision of the services to Falcon Heights under this Agreement.

B. Billing.

Saint Paul agrees to invoice Falcon Heights for regular services provided under this Agreement within 30 days of the end of each calendar quarter beginning with the quarter _____, 2021. Saint Paul also agrees to invoice Falcon Heights by January 31 of each year for all labor and/or other miscellaneous expenses incurred during the previous calendar year due to extraordinary circumstances as previously approved by Falcon Heights. Upon review and verification, Falcon Heights will pay Saint Paul the required amount within 35 days of receipt of each invoice.

C. **Emergency Services Charges.** Falcon Heights, in its sole discretion, may exercise its authority to impose and collect an emergency service charge on those receiving emergency services, including fire services, within the City of Falcon Heights. Saint Paul shall have no right to, or interest in, any service fees collected by Falcon Heights. If Falcon Heights imposes an emergency service charge it shall provide Saint Paul a list of the specific types of information it determines it needs collected in order to successfully impose and collect the charge. Saint Paul shall make a good faith effort to collect the requested information for each service call to with the City of Falcon Heights and promptly provide Falcon Heights with the information it collected.

SECTION 7. Independent Contractor.

In providing services to Falcon Heights under this Agreement, Saint Paul will be acting as an independent contractor, and nothing will be deemed to create a relationship of employer-employee, common law employee, principal-agent, partner, or joint venture between Saint Paul and Falcon Heights. Neither party has any authority to bind the other to any contract or agreement without the other's written permission. Saint Paul will be responsible for all of its own federal, state, and local taxes, withholding, social security, insurance, and other employee benefits. It is understood and agreed Falcon Heights shall have no responsibility whatsoever toward the firefighters or other emergency personnel including any employment related issues such as training, supervision, performance reviews, or discipline. It is further agreed that Falcon Heights has no responsibility, beyond paying the agreed upon compensation under Section 6, for acquiring, operating, maintaining,

housing, or replacing equipment as needed to provide the fire services described herein.

SECTION 8. Liability.

Falcon Heights agrees to release Saint Paul, its officers, agents and employees, from all claims for damages or loss resulting from failure to furnish or delay in furnishing personnel or equipment, or from failure to prevent, control or extinguish any conflagration, whether resulting from the negligence of Saint Paul, its officers, agents or employees or otherwise. Falcon Heights agrees to indemnify, save and hold harmless Saint Paul, its officers, agents and employees, from all claims for injury, loss or damage to persons or property occurring in connection with performance of the services hereunder and arising out of and caused by the negligent act or omissions Falcon Heights's officers, agents or employees.

Falcon Heights will reimburse Saint Paul for all loss and damage to equipment while being used in Falcon Heights in connection with the furnishing of services under this Agreement, ordinary wear and tear excepted.

SECTION 9. Insurance.

Both Falcon Heights and Saint Paul are municipal subdivisions under the statutes of the State of Minnesota and represent and warrant that they are authorized as self-insured or have in place insurance policies for purposes of all property damage and general liability claims. Both Falcon Heights and Saint Paul also represent that they have in full force and effect applicable health insurance, including worker's compensation or disability insurance for themselves and their employees performing work under this Agreement. Liability limitations and exceptions apply to both cities pursuant to Minn. Stat., Chapter 466 and laws related thereto and no party shall recover damages against Falcon Heights and Saint Paul any amounts greater than the limits on liability for any one party as provided in Minn. Stat., Chapter 466. The cities shall both provide a copy of their certificate or letter evidencing self-insurance as described herein.

SECTION 10. Saint Paul's Warranties and Covenants.

Saint Paul hereby represents, warrants, and covenants as follows:

1. Saint Paul is financially solvent; able to pay its debts and is possessed of sufficient working capital to provide the services/equipment in accordance with the Agreement.

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2. Saint Paul warrants that it has complied with all applicable registration and licensing requirements to enable Saint Paul to act as an independent contractor under the terms of this Agreement.
3. Saint Paul has the experience and skills necessary to perform and provide the services and equipment required pursuant to this Agreement. All services provided by Saint Paul will be performed:
 - a. In a professional manner, with a high grade, nature, and quality commensurate with that which is customary in the industry;
 - b. In compliance with all applicable federal, state, and local laws, rules, regulations and ordinances, including, without limitation, the laws, rules and regulations of the federal Occupational Safety and Health Act (OSHA).

SECTION 11. Termination of Agreement.

This Agreement may be terminated by mutual consent of the parties at any time. This Agreement may be terminated by either party for material breach upon 30 days' written notice to the other party and that party's failure to cure the default within said period of time. This Agreement is subject to termination without cause by either party upon ninety (90) days' written notice. Upon termination, Saint Paul will invoice Falcon Heights for the pro-rated portion of the total work already complete of the total up to the time of termination.

SECTION 12. Data Practices.

Saint Paul and Falcon Heights agree to abide strictly by Minn. Stat., Chapter 13, the Minnesota Government Data Practices Act. All of the data created, collected, received, stored, used, maintained, or disseminated by Saint Paul in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and any service provider must comply with those requirements as if it were a governmental entity. The remedies in the Minnesota Government Data Practices Act apply to Saint Paul and Falcon Heights. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

SECTION 13. Legal Responsibilities to the Public.

Saint Paul will, while in Falcon Heights or performing any of the services hereunder, comply with all applicable local, state and federal safety laws and regulations including, without limitation,

laws and regulations under the federal Occupational Safety and Health Act.

SECTION 14. Access to Financial Records.

Falcon Heights may request statements of account regarding income or expenses generated pursuant to this Agreement. Saint Paul agrees to provide such statements of account within a reasonable period of time, not to exceed 45 days, after receipt of the request from Falcon Heights.

SECTION 15. Assignment or Transfer of Duties.

Saint Paul and Falcon Heights acknowledge that the services to be rendered under this Agreement are unique and personal. Neither party may assign, transfer or delegate its rights, duties or obligations under this Agreement without the prior written consent of the other party.

SECTION 16. Amendments.

All alterations, amendments, deletions or waivers of the terms of this Agreement shall be valid and enforceable only when they have been agreed upon by both parties and executed by both parties in writing.

SECTION 17. Entire Agreement.

It is understood and agreed that this Agreement constitute the entire agreement by the parties concerning the subject matter hereof and supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

SECTION 18. Interpretation of Agreement, Venue.

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

SECTION 19. Waiver.

The waiver by either of the Cities of any breach under the terms of this Agreement or the failure by a City to enforce the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of a City's rights and/or remedies with respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the Cities provided or referred under the terms of this Agreement are cumulative and not mutually exclusive.

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SECTION 20. Notices.

Unless otherwise specified in this Agreement, all notices or other written communications required under this Agreement shall be delivered in person, recognized private delivery service or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

To Saint Paul:
Saint Paul Fire Department
645 Randolph Avenue
Saint Paul, MN 55102
Attn: Jill LaCasse

To Falcon Heights:
2077 West Larpenteur Avenue
Falcon Heights, Minnesota 55113
Attn: City Administrator

SECTION 21. Severability.

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or otherwise unenforceable by a court of competent jurisdiction, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

SECTION 22. Counterparts.

This Agreement may be executed individually in counterparts, with each part an original, and together all parts form a single document.

SECTION 23. Electronic Signatures.

The parties agree that the electronic signature of a party to this Agreement 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 when printed from electronic files. For purposes hereof, "electronic signature" also means manually signed original signature that is then transmitted by an 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.

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Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

IN WITNESS WHEREOF, the respective parties have executed this Agreement, intending to be bound hereby effective the date and year indicated above.

[SIGNATURE PAGES TO FOLLOW]

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FALCON HEIGHTS

Its: _____

SAINT PAUL

Mayor or Designee

Director of Financial Services

Fire Chief

Approved as to Form

Assistant City Attorney

