

**STATE OF MINNESOTA
JOINT POWERS AGREEMENT**

This agreement is between the State of Minnesota, acting through its Commissioner of the Department of Natural Resources (DNR), and City of Saint Paul, Fire Department (SPFD) 645 Randolph Avenue, Saint Paul, MN 55102.

Recitals

Under Minnesota Statute § 471.59, subdivision 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of fire fighters, as part of the Minnesota Incident Command System, to provide support for conducting search and rescue services and fighting wildfires.

Agreement

1) Term of Agreement

- a) *Effective date:* April 15, 2014, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- b) *Expiration date:* December 31, 2016, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2) Definitions

- a) **Helitack:** A team comprised of one MSP Airwing Division pilot and two trained and qualified Saint Paul Fire personnel deployed for wildland firefighting operations.
- b) **Minnesota Aviation Rescue Team (MART):** A team comprised of one or two MSP Airwing Division pilots and two Saint Paul Fire Department ARS-trained personnel deployed for search/rescue/EMS operations.

3) Agreement between the Parties

a) Helitack Operations:

- i) The SPFD will provide fire fighters for the purpose of supporting the DNR in the fighting of wildfires as requested.
- ii) DNR will determine the number of fire fighters necessary based upon DNR's needs, policies, procedures and applicable laws.
- iii) DNR and SPFD shall determine the team size and rotation schedule (if applicable) prior to deployment.
- iv) SPFD has the right to refuse services if conditions within the City of Saint Paul warrant such actions (low daily staffing levels, on-going/long-term incident in the city, etc.)
- v) SPFD services may be performed by fire fighters working in excess of their regularly scheduled hours (overtime).
- vi) SPFD shall be in charge of their firefighters and the duties that they provide.
- vii) Each party shall be liable for its acts thereof.

b) MART Operations:

- i) SPFD will provide fire fighters for the purpose of conducting search and rescue services as requested for supporting the DNR when fighting wildfires.
- ii) SPFD will provide fire fighters/paramedics for the purpose of rendering medical aid to the DNR when assigned to support operations on wildland fire incidents.
- iii) DNR will determine the number of fire fighters necessary based upon DNR's needs, policies, procedures and applicable laws.
- iv) DNR and SPFD shall determine the team size and rotation schedule (if applicable) prior to deployment.
- v) SPFD has the right to refuse services if conditions within the City of Saint Paul warrant such actions (low daily staffing levels, on-going/long-term incident in the city, etc.)
- vi) SPFD services may be performed by fire fighters working in excess of their regularly scheduled hours.
- vii) SPFD shall be in charge of their firefighters and the duties that they provide

4) Payment

- a) DNR is responsible to reimburse SPFD for personnel time, at their regular salary rate or overtime rate as appropriate, when they are requested by the DNR and they report for duty with the helicopter on wildfire assignments.
- b) SPFD shall provide DNR a cost approximation for any personnel charges prior to deployment.
- c) In the event that the SPFD fire fighters must remain at a destination overnight, DNR will be responsible for the fire fighters compensation. This compensation will include salary for their duty hours, lodging and any contractually authorized per diem.
- d) The total obligation of the State under this agreement will not exceed \$20,000.00 inclusive of all compensation and expense reimbursement – per incident/deployment.

5) Authorized Representatives

- a) The State's Authorized Representative is Helicopter Operations Specialist Bill Schuster, or his successor.
- b) The Governmental Unit's Authorized Representative is John Swanson, 645 Randolph Avenue, Saint Paul, MN 55102, 651-228-6256.

6) Assignment, Amendments, Waiver, and Contract Complete

- a) *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.
- b) *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.
- c) *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.
- d) *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.

7) Liability

- a) A governmental unit participating in a joint venture or joint enterprise, including participation in a cooperative activity undertaken pursuant to this section or other law, is not liable for the acts or omissions of another governmental unit participating in the joint venture or joint enterprise, unless the participating governmental unit has agreed in writing to be responsible for the acts or omissions of another participating governmental unit.
- b) For purposes of determining total liability for damages, the participating governmental units and the joint board, if one is established, are considered a single governmental unit and the total liability for the participating governmental units and the joint board, if established, shall not exceed the limits on governmental liability for a single governmental unit as specified in section 3.736 or 466.04, subdivision 1, or as waived or extended by the joint board or all participating governmental units under section 3.736, subdivision 8; 466.06; or 471.981. This paragraph does not protect a governmental unit from liability for its own independent acts or omissions not directly related to the joint activity.
- c) If a participating governmental unit has procured or extended insurance coverage pursuant to section 3.736, subdivision 8; 466.06; or 471.981 in excess of the limits on governmental liability under section 3.736 or 466.04, subdivision 1, covering participation in the joint venture or joint enterprise, the procurement of that insurance constitutes a waiver of the limits of governmental liability for that governmental unit to the extent that valid and collectable insurance or self-insurance, including, where applicable, proceeds from the Minnesota Guarantee Fund, exceeds those limits and covers that governmental unit's liability for the claim, if any.

8) Indemnification

In the performance of this contract by the Governmental Unit, or Governmental Unit's agents or employees, the Governmental Unit 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 Governmental Unit's:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

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 Governmental Unit may have for the State's failure to fulfill its obligation under this contract.

9) State Audits

- a) Under Minnesota Statute § 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 years from the end of this agreement.

10) Government Data Practices

- a) The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minnesota Statute 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 agreement. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data referred to in this clause by either the Governmental Unit or the State.
- b) 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.

11) Venue

- a) 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.

12) Termination

- a) *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.
- b) *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.

13) E-Verify Certification (In accordance with Minn. Stat. §16C.075)

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor 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. Contractor 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 Contractor and made available to the State upon request.

1. STATE ENCUMBRANCE VERIFICATION

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

Signed: Georgina Weidell
Date: 8.6.14

SWIFT Contract No. 82083 /PO# 3-63437

2. GOVERNMENTAL UNIT

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

3. STATE AGENCY

By: _____
(with delegated authority)
Title: _____
Date: _____

4. COMMISSIONER OF ADMINISTRATION
As delegated to Materials Management Division

By: _____
Date: _____

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Governmental Unit
State's Authorized Representative - Photo Copy