



Joint Powers Agreement

State of Minnesota

SWIFT Contract Number: 135984

This Agreement is between the State of Minnesota, acting through its Commissioner of Public Safety on behalf of the Homeland Security and Emergency Management division ("State"), and the City of Saint Paul, acting on behalf of the Saint Paul Fire Department, 645 Randolph Avenue, Saint Paul, MN 55102 ("Governmental Unit").

Recitals

Under Minnesota Statutes § 471.59, subdivision 10, and 2001 Special Session Minnesota Law Chapter 8, Article 4, Section 10, Subdivision 2, the State is empowered to engage such assistance as deemed necessary.

Agreement

1 Term of Agreement

- 1.1 **Effective Date.** **October 1, 2017**, or the date the State obtains all required signatures under Minnesota Statutes § 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration Date.** **September 30, 2022**, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2 Agreement Between the Parties

The Governmental Unit will:

- (a) Respond to hazardous materials incidents occurring in the Governmental Unit's primary and secondary response areas when requested.
- (b) Respond to any response area in the State when directed to do so by the Commissioner of Public Safety (*Minnesota Rules Chapter 7514.0900, subpart 1*).
- (c) Coordinate on-scene emergency response operations 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 an average of fifteen (15) minutes from the time a decision is made to dispatch the team. 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 E, which is attached and incorporated into this Agreement, is notified by the State.
- (g) Ensure compliance with all other employer requirements (*Minnesota Rules Chapter 7514.0600*).
- (h) Conduct a formal evaluation of the combined hazardous materials Emergency Response/Chemical Assessment Team's ("ERT/CAT Team's") 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 (*Minnesota Rules Chapter 7514.0900, subpart 7*); and use appropriate measures to identify to the State the responsible person of each incident, including social security number or federal tax identification number.
- (j) Designate one (1) primary and one (1) alternate representative to the State's Hazardous Materials Regional Response Team Program Advisory Committee (*Appendix G*); 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 (*Appendix G*) and require each representative to train in applying operating guidelines and other administrative procedures established and identified by the State's Hazardous Materials Regional Response Team (*Minnesota Rules Chapter 7514.0700, subpart 2*); and require one or both representatives to instruct other ERT/CAT Team members.
- (l) Maintain and store emergency response vehicle(s) and equipment in proper working order and in response-ready status at all times. This duty applies to all vehicles and equipment regardless of ownership including

vehicles and equipment loaned to the Governmental Unit. One exception to this duty is when routine or required maintenance, repairs or replacement of a vehicle or equipment is required. The Governmental Unit shall immediately notify the State at any time Governmental Unit is not available for an emergency response.

- (m) Submit claims to the Commissioner for recoverable costs (*Minnesota Rules Chapter 7514.1700, subparts 1 and 3*); and use appropriate measures to identify to the State the responsible person of each incident, including social security number or federal tax identification number.
- (n) Maintain the required composition of an Emergency Response Team (*Minnesota Rules Chapter 7514.0800*) including the availability for immediate response of nine (9) members minimum certified to the levels of hazardous materials 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) Maintain the required composition of a Chemical Assessment Team (*Minnesota Rules Chapter 7514.0800*) including the availability for immediate response of three (3) members minimum certified to the levels of hazardous materials training. The State recommends maintaining a level of five (5) 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 five (5) team members to an incident.
- (p) Respond to incidents and assist local authorities at the scene of a hazardous materials incidents by providing simple 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 (*Minnesota Statutes § 299A.49, subdivision 2, and Minnesota Rules Chapter 7514.0900*).

The Governmental Unit shall not subcontract any work, duties or tasks pursuant to this Agreement.

3 Consideration and Payment

3.1 Consideration. The State will pay for all services performed by the Governmental Unit under this Agreement as follows:

- (a) **Compensation.** The Governmental Unit will be paid by the State for the following costs, up to but not exceeding **One Hundred Thirty Five Thousand and 00/100 Dollars (\$135,000.00)** during each twelve-month period, i.e. October 1 through September 30, of the Agreement:
 - 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, Section 3.1(a), of this Agreement, increasing and decreasing amounts between categories as needed and justified with the exception of Category 5, Administration. Administration costs shall not be increased more than 20% without prior written approval from the State's Authorized Representative. The total amount payable corresponding to Clause 3, Section 3.1(a), shall not exceed **One Hundred Thirty Five Thousand and 00/100 Dollars (\$135,000.00)** during each twelve-month period commencing October 1 and ending September 30 of the following year.
- (c) **Total Obligation.** The total obligation of the State for all compensation to the Governmental Unit corresponding to Clause 3, Section 3.1(a) of this Agreement shall not exceed **One Hundred Thirty Five Thousand (\$135,000.00)** for each twelve month period commencing October 1 and ending September 30, a total of **Six Hundred Seventy Five Thousand and 00/100 Dollars (\$675,000.00)** during the Term of Agreement.
- (d) **Emergency Response Reimbursement.** In addition to the Compensation identified in Clause 3, Section 3.1(a) above, the State will reimburse 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) **ERT Team Personnel Costs**
An hourly rate per person, including wages and fringe benefits, for two (2) hours minimum per person, up to twelve (12) 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) **CAT Team Personnel Costs**
An hourly rate per person, including wages and fringe benefits, for two (2) hours minimum per

person, up to five (5) persons [Note: See Clause 2(o) above]. Hourly rates will be determined by and in accordance with the Governmental Unit's collective bargaining agreement(s) corresponding to personnel.

3) Additional Wage Costs for Local Callback Personnel

An hourly rate per person, including wages and fringe benefits, for two (2) hours minimum per person, up to twelve (12) persons for ERT and up to five (5) persons for CAT. Hourly rates will be determined by and in accordance with the Governmental Unit's collective bargaining agreement(s) corresponding to personnel.

4) Vehicle Operating Costs

Up to \$120.00 per hour for Emergency Response vehicles, Chemical Assessment vehicles, Rescue Squad vehicles, Fire Engines, and Ladder Trucks; and up to \$62.00 per hour for additional vehicles.

5) 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.

6) 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.

7) 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.

8) 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.

9) 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.

10) 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.

11) 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.

12) 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 [Clause 3, Sections 3.1(a) and (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 Clause 3, Section 3.1(a) and Section 3.1(b) of this Agreement. Governmental Unit shall submit a final invoice for each twelve-month period of this Agreement no later than October 30 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, Section 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, Section 3.1(d) above. 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:	Joe Kelly, Director, Homeland Security and Emergency Management
Address:	Department of Public Safety 445 Minnesota Street, Suite 223 Saint Paul, MN 55101
Telephone:	651.201.7404
Email Address:	joseph.kelly@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:	Matt Simpson, Acting Fire Chief
Address:	Saint Paul Fire Department 645 Randolph Avenue Saint Paul, MN 55102
Telephone:	651.224.7811
Email Address:	matthew.simpson@ci.stpaul.mn.us

5 Assignment, Amendments, Waiver, and Agreement 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 same parties who executed and approved this Agreement, or their successors in office.
- 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 same parties who executed and approved the original agreement, or their successors in office.
- 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 Liability

Each party shall be responsible for its own acts and behavior and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes § 3.736, and other applicable laws govern the State's liability. The Minnesota Municipal Tort Claims Act, Minnesota Statutes §§ 466.01-466.15, and other applicable laws govern the Governmental Unit's liability.

7 State Audits

Under Minnesota Statutes § 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 (6) years from the end of this agreement.

8 Government Data Practices

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 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 Statutes § 13.08 apply to the release of the data referred to in this clause 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 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.

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 email 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 Minnesota Statutes § 16C.075)

For services valued in excess of \$50,000, 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. 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/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Governmental Unit and made available to the State upon request.

12 Certification of Nondiscrimination (In accordance with Minnesota Statutes § 16C.053)

The following term applies to any Agreement for which the value, including all extensions, is \$50,000 or more: Governmental Unit certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Governmental Unit's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

13 Other Provisions

Appendices A through F referenced below are attached and incorporated into this Agreement:

13.1 Primary Response Area. For purposes of Clause 2, Governmental Unit's primary response area is described in Appendix A.

13.2 Secondary Response Area. For purposes of Clause 2, Governmental Unit's secondary response area is described in Appendix B.

13.3 Governmental Unit's Geographic Jurisdiction. For purposes of Clause 2, Governmental Unit's normal geographic jurisdiction is described in Appendix C.

13.4 Point of Contact for Team Dispatching. Governmental Unit agrees to maintain a single point-of-contact who will be used by the State to dispatch Governmental Unit. Governmental Unit's single point-of-contact is identified in Appendix D.

13.5 Designees of the State's Authorized Representative. Appendix E identifies designees of the State's Authorized Representative and their delegated authority to act on his behalf.

13.6 Governmental Unit's Primary and Alternate Representatives. For purposes of Clause 2, the Governmental Unit's primary and alternate representatives are identified in Appendix F.

13.7 The parties mutually agree that all necessary and reasonable costs associated with a state-authorized emergency response to a hazardous materials incident incurred by the Governmental Unit and authorized by the State, will be billed by the State to the responsible person, and managed by the State through a separate revolving account for such incidents. Governmental Unit agrees that the State subrogates the rights of the Governmental Unit against the responsible person as defined in Minnesota Statutes § 299A.52.

13.8 The parties mutually agree that all capital equipment purchased with State funds remains the sole property of the State of Minnesota.

1. State Encumbrance Verification

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

Print Name: _____

Signature: _____

Date: _____

SWIFT Purchase Order Number: **3000051970**

**3. State of Minnesota: Department of Public Safety;
Homeland Security and Emergency Management Division
With Delegated Authority**

Print Name: _____

Signature: _____

Title: _____

Date: _____

2. Governmental Unit: City of Saint Paul

Print Name: _____

Signature: _____

Title: Fire

Date: _____

Print Name: _____

Signature: _____

Title: City Attorney

Date: _____

Print Name: _____

Signature: _____

Title: Director of Financial Services

Date: _____

**4. Commissioner of Administration
As delegated to the Office of State Procurement**

Signature: _____

Date: _____

APPENDIX A

PRIMARY RESPONSE AREA

The Governmental Unit's primary response area is described as follows:

The entire Minnesota counties of: Ramsey; Washington; and Dakota.

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 Saint Paul, Minnesota.

APPENDIX D

POINT-OF-CONTACT FOR TEAM DISPATCHING

The Governmental Unit's single point-of-contact for purposes of CAT Team dispatching is described as follows:

Ramsey County Emergency Communications Center

Don Smiley, Communications Center [Telephone Number: 651.266.7716]

24-hour emergency telephone number: 651.266.7702 or 651.291.1111

APPENDIX E

DESIGNEES OF STATE'S AUTHORIZED REPRESENTATIVE

State's Authorized Representative:
Joe Kelly, Director

Designees of State's Authorized Representative:
Rick Luth, State Emergency Response Teams Coordinator
Joe Neuberger, Operations Branch Director
Kevin Reed, Deputy Director

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: _____
Joseph Kelly, Director
Homeland Security and Emergency Management

Date

APPENDIX F

PRIMARY AND ALTERNATE REPRESENTATIVES TO THE HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM

The Governmental Unit's primary and alternate representatives to the Hazardous Materials Regional Response Team are as follows:

Primary Representative:

Mike Gaede

Telephone Numbers: 651.228.6212 (work); 715.497.6590 (mobile)

Email Address:

Alternate Representative:

Tony Farina

Telephone Number: 651.228.6259 (work); 651.247.5552 (mobile)

Email Address: