

PUBLIC SAFETY COMMITTEE

12-0340R

RESOLUTION AUTHORIZING AGREEMENT WITH THE STATE OF MINNESOTA HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION FOR CONTINUED PROVISION OF HAZARDOUS MATERIALS CHEMICAL ASSESSMENT TEAM SERVICES THROUGH SEPTEMBER 30, 2012 IN THE AMOUNT OF \$9,500 AND AUTHORIZING APPLYING FOR AND ACCEPTING A NEW AGREEMENT.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. _____, with the state of Minnesota through its commissioner of public safety, division of homeland security and emergency management for providing services as a hazardous materials chemical assessment through September 30, 2012 in the amount of \$9,500, said sum to be payable to Fund 110-150-1505-4210-02 (General Fund, Fire, Hazardous Materials, Pass Through Grant); and

RESOLVED, that the proper city officials are authorized to apply to the state for a new agreement for chemical assessment team services through July 1, 2017.

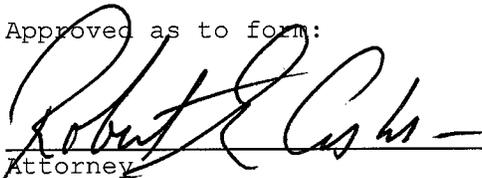
Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize a new contract to allow the City to continue to provide hazardous materials chemical assessment team services through September 30th and to authorize applying to the State Division of Homeland Security and Emergency Management to act as a hazardous materials chemical assessment team in the future. It would also authorize applying for a new agreement if offered by the State.

The hazardous materials chemical assessment teams ("CATs") are intended to assist local authorities at the scene of a hazardous materials incident by providing simple mitigation to a hazardous materials incident and are required to recommend to the local incident manager the best means of controlling the hazard.

In 2007, the City entered into an agreement with the State to provide CAT services in this area, which agreement was extended through July 1, 2012. Both the State and the City, through its fire department, want the City to continue to be able to provide these services. The first agreement authorizes the City to continue to provide the services through September 30th and provide \$9,500 to do so. The second part of the resolution would allow the City to apply for an agreement and funds to continue to provide these services in this area.

STATE OF MINNESOTA PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

This contract is between the State of Minnesota, acting through its Commissioner of Public Safety, Division of Homeland Security and Emergency Management ("State") and City of Duluth, Fire Department, 602 West Second Street, Duluth, Minnesota 55802 ("Contractor").

Recitals

1. Under Minn. Stat. § 15.061 and 299A.50, Subd. 2, and Reorganization Order # 191 the State is empowered to enter into contracts with other state departments and agencies, local units of government, other states, Indian tribes, the federal government, or other nonpublic persons to implement the provisions of Minnesota Rules, Chapter 7514.
2. The State is in need of professional/technical services from regionally located Hazardous Materials Emergency Chemical Assessment Teams to assist local authorities in protecting the public's safety from effects of a hazardous materials release.
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.

Contract

1 Term of Contract

- 1.1 **Effective date:** July 1, 2012, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
The Contractor must not begin work under this contract until this contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration date:** September 30, 2012, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 8. Indemnification; 9. State Audits; 10. Government Data Practices and Intellectual Property; 14. Publicity and Endorsement; 15. Governing Law, Jurisdiction, and Venue; and 16. Data Disclosure.

2 Contractor's Duties

The Contractor, who is not a state employee, except as defined in Minn. Stat. § 299A.51, Subd 1 and 2, will:

- 2.1 be responsible for all terms, tasks and conditions assigned by Minn. Stat. §§ 299A.48 to 299A.52 and Minnesota Rules, Chapter 7514, including but not limited to the following:
 - (A) Respond to hazardous materials incidents occurring in Contractor'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 operation with local, state and federal agencies, Indian tribes, and private response organizations through the Minnesota Incident Management System (*Minnesota Rules, Chapter 7514.01800, Subpart 1*);
 - (D) Ensure that team members are in compliance with the initial, continuing education, and team training requirement established in 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 that team members are in compliance with the medical requirements established in 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 a hazardous materials incident within and average of fifteen (15) minutes from the time the decision is made to dispatch the team (*Minnesota Rules, Chapter 7514.0500*). For purposes of the clause, the decision to dispatch the team will be considered made at the

- time the Contractor's point of contact for purposes of dispatching the team, as identified in Appendix E, is notified by the State;
- (G) Ensure compliance with all other employer requirements established in Minnesota Rules, Chapter 7514.0600;
 - (H) Conduct a formal evaluation of the team's response to each incident as required by Minnesota Rules, Chapter 7514.1300;
 - (I) Submit a detailed report of the team's response to an incident as required by Minnesota Rules, Chapter 7514.0900, Subpart 7, and take all appropriate measures to identify to the State the responsible person of each incident, to include Social Security number or Federal Tax Identification number;
 - (J) Designate a primary and alternate representative to the Hazardous Materials Regional Response Team Program Advisory Committee, who will attend all meetings of the committee and have the authority to make recommendations on behalf of the Contractor;
 - (K) Designate a primary and alternate representative who will receive training in applying the suggested operating guidelines and other administrative procedures of the Hazardous Materials Regional Response Team Program, provided by the Commissioner, as required by Minnesota Rules, Chapter 7514.0700, Subpart 2, and who will be responsible for providing that instruction to other team members;
 - (L) Maintain and store emergency response vehicles and equipment, whether loaned to Contractor by the State, or owned by the Contractor, in proper working order and ready for response at all times, except as may be necessary for the performance of routine or necessary maintenance, repairs or replacement. Contractor must immediately notify the State whenever Contractor is not available for emergency response as a result of such circumstances;
 - (M) Submit claims for recoverable costs to the Commissioner as required by Minnesota Rules, Chapter 7514.1700, Subparts 1 and 3, and take all appropriate measures to identify to the State the responsible person for each incident, to include Social Security number or Federal Tax Identification number;
 - (N) Maintain the minimum composition of team members required by Minnesota Rules, Chapter 7514.0800.
 - (O) Respond to incidents to perform the functions of a Chemical Assessment Team as required by Minnesota Rules, Chapter 7514.0900, subparts 3 and 4, with a minimum of three (3) and a maximum of five (5) persons certified to the levels of hazardous materials training required by Minnesota Rules, Chapter 7514.0800 Subpart 6;
 - (P) Respond to incidents and assist local authorities at the scene of a hazardous materials incidents by providing simple mitigation to the hazardous materials incident 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 Statute, Chapter 299A.49, subpart 2);
 - (Q) Respond to incidents in conjunction with an Emergency Response Team to assess an incident, develop and recommend mitigation strategies, and assist with response operations (Minnesota Rules, Chapter 7514.0900, Subpart 4).

3 Time

The Contractor must comply with all the time requirements described in this contract. In the performance of this contract, time is of the essence.

4 Consideration and Payment

4.1 *Consideration.* The State will pay for all services performed by the Contractor under this contract as follows:

- (A) *Compensation.* The Contractor will be paid by the State for the following costs associated to:
 - (1) Capital equipment – cost of capital equipment including vehicles not to exceed \$0.00.
 - (2) Training – Annual cost of training team personnel (excluding exercise training) not to exceed \$1,000.00.
 - (3) Medical Examinations – Cost of annual medical examinations for team personnel not to exceed \$500.00.
 - (4) Consumable Supplies – Initial cost of consumable supplies not to exceed \$3,500.00.
 - (5) Administration – Program administration costs not to exceed \$950.00.

- (6) Maintenance – Equipment maintenance costs not to exceed \$3,550.00
- (B) Contractor may deviate from proposed budget stated in Clause 4, Section 4.1, Item (A) of this contract increasing and decreasing amounts between approved categories listed as needed and justified with the exception of category (5). Category (5) pertains to administration costs and may not be increased more than 20% without prior written approval from the State's Authorized Representative of this contract. The total amount for Clause 4, Section 4.1, Item (A) may not exceed \$9,500.00. Funds not expended by the Contractor during the term of the contract will be cancelled.
- (C) **Emergency Response Compensation.** Contractor will be reimbursed by the State for the reasonable and necessary costs associated with an actual response as follows:
- (1) **Team Personnel Costs:**
\$63.00 per hour, including wages and fringe benefits, per person, and two (2) hour minimum. Team personnel costs may increase in accordance with contract between the City of Duluth and the International Association of Firefighters Local #101.
 - (2) **Additional Wage Costs for Local Callback Personnel:**
\$15.25 per hour, including wages and fringe benefits, per person, and two (2) hour minimum. Team personnel costs may increase in accordance with contract between the City of Duluth and the International Association of Firefighters Local #101.
 - (3) **Vehicle Operating Costs:**
\$50.00 per hour for support vehicles, and \$60.00 per hour for hazardous materials response vehicles.
 - (4) **Cost of Consumable Supplies Used:**
Contractor will submit and itemized invoice for actual costs incurred.
 - (5) **Costs of Repair or Replacement of Damaged or Destroyed Equipment:**
Contractor will submit an itemized invoice for actual costs incurred. If costs exceed \$500.00, the State may request competitive bids or quotes prior to the repair or replacement of equipment. Contractors, who are municipalities, must comply with municipal bidding laws.
 - (6) **Communications Costs:**
Contractors will submit an itemized invoice for actual costs incurred. Eligible costs are defined as cellular and land line telephone costs for voice, data, or facsimile transmissions.
 - (7) **Administrative Costs Directly Resulting from the Emergency Response:**
Up to \$500.00 per response, including wages and fringe benefits. Contractor may request additional administrative cost compensation, based on an itemized invoice for actual costs incurred, when extraordinary circumstances resulting from a specific State authorized emergency response are documented.
 - (8) **Costs incurred in the use of Special Equipment as provided in Minnesota Rules, Chapter 7514.1200.**
 - (9) **Costs associated with providing Support to Cleanup Operations when requested in accordance with Minnesota Rules, Chapter 7514.0900, Subpart 5.**
 - (10) **Costs associated with providing Standby Technical Assistance when requested in accordance with Minnesota Rules, Chapter 7514.1600, Subpart 4.**
 - (11) **Other Direct Costs incurred by the Contractor as a result of the Emergency Response.**

- (D) Costs incurred under Clause 4, Section 4.1, Item (C) of this contract for any single response by Contractor may not exceed \$5,000.00, unless authorized by the State.

All necessary and reasonable costs associated with a State authorized emergency response to a hazardous materials incident, incurred by the Contractor 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. Contractor agrees that the State subrogates to the rights of the Contractor against the responsible person as defined in Minnesota Statutes 299A.52.

- (E) The total obligation of the State for all compensation to Contractor incurred under Clause 4, Section 4.1, Item (A), of this contract will not exceed \$9,500.00.

4.2. *Payment.*

- (A) **Invoices.** The State will promptly pay the Contractor after the Contractor 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 in a form prescribed by the State, and according to the following schedule:
- (1) **Contractor Compensation:** Contractor will submit a completed Contractor's Compensation Reimbursement Packet at least annually but not more frequently than monthly for reimbursement of costs identified in Clause 4, Section 4.1, Items (A) and (B) of this contract. Final invoice for reimbursement must be received by the State no later than November 15, 2012. The State will process completed Reimbursement Packets for compensation within thirty (30) days of receipt. The total amount of reimbursement pertaining to Clause 4, Section 4.1, Items (A) and (B) of this contract will not exceed the limits of this contract.
 - (2) **Emergency Response Compensation:** Contractor is responsible for submitting a claim for reimbursement for the reasonable and necessary costs associated with a State authorized emergency response to a hazardous materials incident within 45 days of the termination of the response. The claim for reimbursement must be made on State provided forms and must detail the reasonable and necessary costs of the response as provided in Clause 4, Section 4.1, Items (C). The State will process completed forms for reimbursement within thirty (30) days of receipt.
- (B) **Retainage.** Under Minnesota Statutes Section 16C.08, subdivision 5(b), no more than 90% of the amount due under this contract may be paid until the final product of this contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this contract.
- (C) **Federal funds.** (Where applicable, if blank this section does not apply) Payments under this contract will be made from federal funds obtained by the State through Title _____ CFDA number _____ of the _____ Act of _____. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

5 **Conditions of Payment**

All services provided by the Contractor under this contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 Authorized Representatives

The State's Authorized Representative is Kris Eide, Director of the Minnesota Division of Homeland Security and Emergency Management, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is Deputy Fire Chief Bryan Bushey, City of Duluth, Fire Department, 602 West Second Street, Duluth, Minnesota 55802, (218)730-4393 or his/her successor. If the Contractor's Authorized Representative changes at any time during this contract, the Contractor must immediately notify the State.

7 Assignment, Amendments, Waiver, and Contract Complete

7.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this contract 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 contract, or their successors in office.

7.2 Amendments. Any amendment to this contract 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 contract, or their successors in office.

7.3 Waiver. If the State fails to enforce any provision of this contract, that failure does not waive the provision or its right to enforce it.

7.4 Contract Complete. This contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

8 Indemnification

In the performance of this contract by Contractor, or Contractor's agents or employees, the contractor 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 Contractor'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.

Minn. Stat. § 299A.51 and Minnesota Rules, Chapter 7514.2000 govern the Contractor's liability. 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 Contractor may have for the State's failure to fulfill its obligation under this contract.

9 State Audits

Under Minnesota Statute § 16C.05, subdivision 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this contract 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 contract.

10 Government Data Practices and Intellectual Property

10.1. Government Data Practices. The Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statute 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 contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this contract. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statute Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State, and consult with the agency as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

11 **Workers' Compensation and Other Insurance**

A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

1. The Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage, except, in accordance with the provisions of Minnesota Statutes, Chapter 299A.51, Subdivision 2, and Minnesota Rules Chapter 7514.2000.
2. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence
 \$2,000,000 – annual aggregate
 \$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage
 Personal and Advertising Injury
 Blanket Contractual Liability
 Products and Completed Operations Liability
 Other; if applicable, please list _____
 State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

C. Additional Insurance Conditions:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits;
- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

E. The successful responder is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the contract.

Further, the Contractor certifies that it is in compliance with Minnesota Statute § 176.181, subdivision 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

12 Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions

Contractor certifies that neither it nor its principles is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the contract award was based. Contractor shall provide immediate written notice to the State's authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

14 Publicity and Endorsement

14.1 **Publicity.** Any publicity regarding the subject matter of this contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

14.2 **Endorsement.** The Contractor must not claim that the State endorses its products or services.

15 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

16 Data Disclosure

Under Minnesota Statute § 270C.65, Subdivision 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

17 Payment to Subcontractors

(If applicable) As required by Minnesota Statute § 16A.1245, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

18 Termination

18.1 **Termination by the State.** The State or commissioner of Administration may cancel this contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

18.2 **Termination for Insufficient Funding.** The State may immediately terminate this contract 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 Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor 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 contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

19 Minnesota Statute § 181.59

The vendor will comply with the provisions of Minnesota Statute § 181.59 which requires:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the

performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

- 20. Other Provisions:** All Appendices A through G referenced below are attached and incorporated into this contract:
- 20.1 Primary Response Area Boundaries: For purposes of Clause 2, Contractor's primary response area boundaries are established as described in Appendix A:
- 20.2 Secondary Response Area Boundaries: For purposes of Clause 2, Contractor's secondary response area boundaries are established as described in Appendix B:
- 20.3 Contractor's Geographic Jurisdiction: For purposes of Clauses 8 and 11, Contractor's normal geographic jurisdiction is established as described in Appendix C:
- 20.4 State owned Vehicles, Trailers and Equipment Loaned to Contractor: State agrees to loan to Contractor the hazardous materials emergency response vehicles and equipment identified in Appendix D, in accordance with the following terms and conditions:
- (A) Contractor may use and have possession of the vehicles, trailers and equipment identified in Appendix D.
 - (B) The State will retain title and legal ownership of loaned vehicles, trailers and equipment identified in Appendix D, and provide for their replacement.
 - (C) The State will, upon request of Contractor, train at least one person designated by Contractor in the proper handling, use and maintenance of the vehicles, trailers and equipment identified in Appendix D. The State shall provide this training to Contractor's personnel without cost, other than travel and related expenses.
 - (D) The State will maintain all necessary inventory control records on the vehicles, trailers and equipment identified in Appendix D.
 - (E) The State will administer any manufacturer's warranty claims that may result during Contractor's use of the vehicles, trailers and equipment identified in Appendix D.
 - (F) The State will provide Contractor with technical assistance as necessary regarding the proper handling, use and maintenance of the vehicles, trailers and equipment identified in Appendix D.
 - (G) Contractor will keep and maintain the vehicles, trailers and equipment in proper operating condition.
 - (H) Contractor will re-supply all disposable, expired and consumable components originally provided by the State, and will supply any other necessary disposable and consumable components not provided by State, at Contractor's expense.
 - (I) Contractor will be responsible for the cost of repairing or replacing vehicles, trailers and equipment that have been lost, or in the opinion of the State, has been damaged due to abuse, misuse, or other cause outside the scope of normal wear and tear incurred in routine proper use. The State will determine whether the vehicles, trailers and equipment will be repaired or replaced.
 - (J) Contractor will be responsible for the costs of routine maintenance and repair in accordance with the manufacturer's recommendations.
 - (K) Contractor will return the vehicles, trailers and equipment identified in Appendix D to the State upon termination, expiration, or cancellation of the contract. All such items to be delivered or shipped to the

State.

- (L) Contractor will not permit the vehicles, trailers and equipment to be tampered with or operated by individuals who are not trained in their proper handling and operation.
 - (M) Contractor agrees to designate one or more person(s) to be trained by the State in the proper handling, use and maintenance of the vehicles, trailers and equipment. The Contractor will bear the cost of any travel and related expenses incurred by any person attending training.
 - (N) The person(s) trained by the State in the proper use, handling and maintenance of the vehicles, trailers and equipment will provide that training to Contractor's team members and other appropriate personnel.
 - (O) Contractor will make the vehicles, trailers and equipment available to personnel authorized by the State when required for inventory or inspection purposes.
 - (P) Contractor agrees to provide secure heated storage for vehicles, trailers and equipment identified in Appendix D.
 - (Q) Insurance: Contractor agrees to provide the State a certificate(s) of insurance, or a statement of self-insurance, naming the State as an additional insured under the policy(s) prior to the execution of this contract:
 - (1) State Owned Equipment Loaned to Contractor: Contractor agrees to provide "All Risk" property floater insurance, or equivalent self-insurance, which provides replacement cost coverage on all State owned property loaned to Contractor by the State.
 - (2) Contractor may recover the cost of such insurance from the State in accordance with Clause 4, Section 4.1, Item A (5), of this contract.
 - (3) Contractor agrees to provide the State thirty (30) days advanced written notice of cancellation, non-renewal, or reductions in limits or coverage's or other changes to the policy(s).
- 20.5 Point of Contact for Team Dispatching: Contractor agrees to maintain a single point of contact that will be used by the State to dispatch Contractor. Contractor's single point of contact is established as identified in Appendix E.
- 20.6 For purposes of this contract, the designees of the State's Authorized Representative are included as Appendix F of this contract.
- 20.7 For purposes of this contract, Contractor's primary and alternate representative(s) to the Hazardous Materials Regional Response Team Program Team Advisory Committee are included as Appendix G of this contract.
- 20.8 This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this contract shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties.
- 20.9 The failure of one party to enforce any provision of this contract will not constitute a waiver by that party of that or any other provision.

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1. STATE ENCUMBRANCE VERIFICATION

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

Signed: Jane Johnson
Date: 6-22-12

SWIFT Purchase Order No. 3000011273

2. CONTRACTOR

The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

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: _____

Title: _____

Date: _____

Distribution:
Agency
Contractor
State's Authorized Representative - Photo Copy

APPENDIX A

Description of Contractor's Primary Response Area

Contractor's Primary Response Area is described as follows:

The entire Minnesota counties of Carlton, Cook, Lake and Pine. In St. Louis County, all areas east of State Highway 73 (exclusive) from Floodwood to the intersection of State Highways 73 and 53.

APPENDIX B

Description of Contractor's Secondary Response Area

Contractor's Secondary Response Area is described as follows:

The entire State of Minnesota.

APPENDIX C

Description of Contractor's Normal Geographic Jurisdiction

Contractor's normal geographic jurisdiction is described as follows:

The corporate limits of the City of Duluth, Minnesota.

APPENDIX D

**MN Department of Homeland Security- Hazardous Materials Regional Response Team
Program
State Owned/Provided Team Equipment List**

Item	
Reference Material	
ACGIH Threshold Limit Values and Biological Exposure Indices	1
Association of American Railroads Emergency Action Guides	1
CHRIS Hazardous Chemical Data Manual	1
Comprehensive Guide to Hazardous Properties of Chemical Substances	1
Crop Protection Chemical Reference	1
2012 Emergency Response Guidebook	1
Emergency Care for Hazardous Materials Exposure	1
Emergency Handling of Hazardous Materials in Surface Transportation	1
Firefighter's Handbook of Hazardous Materials	1
General American Tank Car Company (GATX) Tank Car Manual	1
Handbook of Compressed Gases	1
Hazardous Chemicals Desk Reference	1
Hazardous Materials Exposure: Emergency Response and Patient Care	1
Jane's CHEM-BIO Handbook	1
Kapler Computerized Chemical Permeation Suit Selection Guide	1
NFPA Fire Protection Guide on Hazardous Materials	1
NIOSH Pocket Guide to Chemical Hazards	1
Symbol Seekers	1
The Pesticide Book	1
Regional Response Team Program Manual	1
Decontamination Equipment	
Astro Turf Mats	3
Brushes, Soft Bristle Long Handle	3
Car Wash Brushes with Garden Hose Connection	2
Patay Diaphragm Pump, with Hoses and 1 Extra Set Nitrile Diaphragms	1
Steel Salvage Drum, 30 gal	3
Emergency Eyewash Kit, Saline Solution	1
Folding Chairs or Stools	6
Folding Table, 72" x 30"	1
Folding Table, 60" x 30"	1
Foot Stools/Step - Plastic	2
Lighting System - Flood, with Generator (6K)	1
Personal Protective Equipment	
MSA Ultra Twin Air Purifying Respirators, with 30 GME-H Canisters	6
Irritant Smoke Fit Test Kit	1
Vinyl Fit Test Tent	1
Chemical Resistant Boots - Electrostatic Dissipating	12 pr.
Gloves, Assorted Materials	
<i>Neoprene/Nitrile</i>	12 pr.
<i>Silver Shield / 4-H</i>	12 pr.
<i>PVC / Nitrile</i>	12 pr.

Viton	12 pr.
Kevlar	12 pr.
Sol-Vex Nitrile	24 pr.
Goggles	6 pr.
Hard Hats / Rescue Helmets	6
Level B Encapsulating Suits	4
Level B Non-Encapsulating Suits	20
Level B Non-Encapsulating Suits	24
Level C Disposable Suits	1 cs.
Suit Cooling Vests	2
Suit Test Kit	1
Vinyl Gloves	2 bxs.
Leak Control Supplies and Equipment	
Bonding and Grounding Equipment	1 set
Dome Cover Clamps	1 set
Drum Upender	1
Radio and Other Communications Equipment	
Cellular Phone, Dual Nam	1
Mobile Radio - 100 watt	1
Portable Radio - 800 MHz	5
Portable Radio Gang Charger	1
Portable Radio Single Charger	1
Portable Radio Spare Batteries	5
In-Suit Communications Equipment	3 sets
Computer Equipment/Software	
ALOHA Software	1
ARCHIE Software	1
CAMEO Windows and Supporting Maps	1
Monitoring and Detection Equipment	
Air Sampling System	1
SpilFyter Kit	1
Leak Detection Solution	1
Colorimetric Detection Tube Kit	1
Dosimeter	6
Dosimeter Charger	1
Drum Sampler	1
4 Gas Monitor	1
4 Gas Monitor Calibration Gas	1
Chlorine Single Gas Monitor (Pac III)	1
Chlorine Calibration Gas Kit	1
Ammonia Single Gas Monitor (Pac III)	1
Ammonia Calibration Gas Kit	1
Photo ionization Detector	1
PID Calibration Gas Kit	1
Radiological Monitor (Victoreen)	1
WeatherPak Meteorological Station	1
Basic Suppression Equipment	
Class D Powder	1
Foam Eductor	1

Foam Application Nozzle - AFFF/ATC	1
Foam Application Nozzle - 65:1	1
Mitigation Supplies	
Citric Acid, 30 gals.	1
Soda Ash, 40 lb. bags	3
Spill-X Acid Neutralizer, 5 gal.	1
Spill-X Caustic Neutralizer, 5 gal.	1
Spill Containment Supplies and Equipment	
Absorbent Booms/Pads/Pillows	1 set
Containment Boom, 75'	1
Dryorb Type Absorbent, 40 lb. bags	4
Lab Packs	1 set
Magic Sorb, 25 lb. bags	2
Plug-N-Dike/Bentonite Clay, 5 gal. pail	1
Poly Overpack Drum, 95 gal.	1
Poly Overpack Drum, 65 gal.	1
Spilstopper Drain Cover Mat	1
Steel Salvage Drum, 85 gal.	1
Steel Salvage Drum, 55 gal.	1
Steel Salvage Drum, 30 gal.	1
Steel Salvage Drum, 15 gal.	1
Steel Salvage Drum, 8 gal.	1
Two Wheel Drum Truck	1
Assorted Non-Sparking and Hand Tools	
Drum Bung Wrench	1
Lockout / Tagout Kit	1
Non-sparking Scoop Shovels	2
Non-sparking Square Nose Shovels	2
Steel Spade Shovels	4
Incident Management and Administrative Supplies and Equipment	
ICS Vest System	2
Vehicles and Trailers	
26' Equipment Trailer and all accessories contained within.	1
Suburban Response Vehicle	1
600 watt Inverter	1
Battery Conditioner	1
Electric Trailer Brake System	1
Electronic Engine Idler	1
Emergency Light Warning System	1
Passenger Safety Screen	1
Radio Console	1
Roll-out Storage Tray	1
Siren System	1
StreamLite Hand Lanterns and Chargers	3
Trailer Hitch and Wiring	1
Hazardous Materials Response Truck (Freightliner)	
Two 50' loose #10-3 SO electrical cords with compatible ends	2
One 4' type 3 fiberglass stepladder	1
Four 10' sections of 3" PVC pipe	4

Two sets of aluminum wheel chocks	2
Four Stream light model # SL40XF orange liteboxes	4
Two (2) Super-Vac or approved equal model SF164E explosion proof fans	2
Two (2) Kwik-Raze 500 watt quartz light with pole	2
Universal haz-mat patch & plug kit "ECAENS" Mfg. Indian Springs Specialty Products "A" & "E" kits w/ non-sparking tools	1
Pipe plugging kit "ECC-1" Mfg. Indian Springs Specialty Products for 1"-4" pipes.	1
External pipe patching kit "ECC-2" Mfg. Indian Springs Specialty Products for 1/2" - 4" pipes	1
Chlorine Institute Emergency Kit "A" w/ 15 min. instructional video	1
Chlorine Institute Emergency Kit "B"	1
Chlorine Institute Emergency Kit "C"	1
Chlorine Institute Cylinder Recovery Vessel Mfg. By Indian Springs Specialty Products Inc. Part #CRVW with wheels	1
Sulfur Dioxide Cylinder Gasket Kit Part #SA	1
Sulfur Dioxide One -Ton Container Gasket Kit Part #SB	1
Sulfur Dioxide Tank Car and Tank Truck Gasket Kit Part #SC	1
800Mhz Radio (Encrypted)	5
One 800Mhz Radio antenna Max Rad 1/4 wave whip	1
VHF Broadband Unity Gain Antenna Part#W652	1
One cellular phone including hands free kit	1
One cellular phone 3 watt booster with vehicle mount antenna	1
Satellite phone kit Mfg. By Global Star to include hi capacity polymer lithium battery, hands free kit, yellow hard-shell pelican case and antenna.	1
Cobra Response Kit R-CH-1 Manufactured by Defense Group Inc	1
Cobra Response Kit:	
Pentax DSmobile USB Scanner	1
Canon BJC-55 Bubble Jet Printer	1
Printer USB Cable	1
GPS Receiver and cable	1
Garmin Mapping Software	1
DC Power inverter	1
Pelican Hardside Case w/padded insert	1
Pelican Lid Organizer	1
CoBRA Software v2.0	1
Safety Tools LLC CBRNE Non-Sparking Tool Kit	1
Wrecking Bar Bar-01 5/8" 15 3/4"	1
Crow Bar Bar-08 3/4" 19 5/8"	1
Cold Hand Chisel Chl-01 5/8" 6 1/4"	1
Cold Hand Chisel Chl-09 3/4" 7 7/8"	1
Knife, Putty Kni-20 2" 8"	1

Knife, Putty Kni-21 1 5/8" 8"	1
Knife, Putty Kni-30 3 1/2" 8"	1
Knife, Common Kni-5 10"	1
Pliers Combination Pli-30 6"	1
Pliers Combination Pli-31 8"	1
Pliers, Lineman's side cutting Pli-40 8 1/2"	1
Pliers, Groove Joint Pli-39 10"	1
Pliers, Long Nose, Side Cutting Pli-41 6"	1
Scraper, Deck Scr-10 2" 13 3/4"	1
Screwdriver, Standard Scd-48 3/16" 3"	1
Screwdriver, Standard Scd-50 1/4" 4"	1
Screwdriver, Standard Scd-54 5/16" 8"	1
Screwdriver, Phillips Type Scd-60 #1 3"	1
Screwdriver, Phillips Type Scd-62 #2 4"	1
Screwdriver, Phillips Type Scd-64 #3 6"	1
Screwdriver, Phillips Type Scd-66 #4 8"	1
Wrench, Bung Double Head Wru-03 15"	1
Hammer, Claw Ham-20 .75 Lbs 4 1/2"	1
Hammer, Engineers Double Face Ham-15 2.25 Lbs 4 3/8"	1
Hammer, Engineers Double Face Ham-70 5 Lbs 6 1/4"	1
Wrench, Pipe Bronze Wrp-14 14" 1 1/2"	1
Wrench, Pipe Bronze Wrp-08 8" 3/4"	1
Wrench, Adjustable Wra-08 8" 15/16"	1
Wrench, Adjustable Wra-10 10" 1 1/8"	1
Wrench, Adjustable Wra-12 12" 1 3/8"	1
Wrench, Combination Box and Open End Set 9 Pieces 3/8" Thru 1"	1
Wrench, Combination Box and Open End Set 11 Pieces 8mm thru 32mm	1
Wrench, Sockets 1/2" Drive Set W/Ratchet & Extension 5/16" Thru 1"	1
Wedge 4 Each Wdg-03 1/2" 2" 6"	1
Wedge 4 Each Wdg-23 3/8" 2" 4"	1
Case, High Impact	1

APPENDIX E

Description of Contractor's Single Point of Contact for Team Dispatching

Contractor's single point of contact for purposes of team dispatching is described as follows:

The St. Louis County Communications Department, Duluth Center, 4848 Lackland Street, Duluth, Minnesota 55811.
The 24-hour emergency phone number is (218)727-8770; the non-emergency number is (218)726-2920.

APPENDIX F

List of Designees of the State's Authorized Representative

State's Authorized Representative:

Kris Eide Director - Division of Homeland Security and Emergency Management

Designees of State's Authorized Representative:

William Chandler MN Division of Homeland Security and Emergency Management
 Kevin Reed MN Division of Homeland Security and Emergency Management

Other persons identified by the State to Contractor in writing.

Authority of Designees:

- Clause 4, Section 4.1, Item (B) Authorization to approve Contractor's Compensation budget deviations of more than 20% pertaining to category (5), "administrative costs".
- Clause 4, Section 4.1, Item (D) Authorization to approve Emergency Response Compensation in excess of \$5,000.00.
- Clause 4, Section 4.2, Item (A) Authorization to approve invoices for Contractor's Compensation and Emergency Response Compensation.
- Clause 12 Authorization to approve publicity or publications prepared by or for the Contractor, and authorization to give instructions to the Contractor concerning the release of data to a requesting party before the data is released.

The undersigned hereby delegate the authorities listed above to those persons identified as Designees of State's Authorized Representative. These authorities are delegated until revoked in writing.

 Kris Eide
 Director - Minnesota Division of Homeland Security and Emergency Management

 Date

APPENDIX G

List of Contractor's Primary and Alternate Representatives
to the Hazardous Materials Regional Response Team Program
Team Advisory Committee

Contractor's primary and alternate representatives to the Hazardous Materials Regional Response Team Program Team Advisory Committee are as follows:

Primary Representative

Marcus Hardin, Captain
City of Duluth, Duluth Fire Department
602 West Second Street
Duluth, Minnesota 55802

Alternate Representative

Deputy Chief Bryan Bushey
City of Duluth, Duluth Fire Department
602 West Second Street
Duluth, Minnesota 55802