



State of Minnesota Contract

SWIFT Contract No.:

This Contract is between the **State of Minnesota**, acting through its Commissioner of Public Safety on behalf of the State Fire Marshal division (“State”), and **City of Marshall**, acting on behalf of its Fire Department, whose designated business address is 201 East Saratoga Street, Marshall, MN 53258 (“Contractor”). The State and Contractor may be referred to jointly as “Parties.”

Recitals

1. State issued a solicitation identified as SWIFT Event 2000013294 on September 6, 2022, for hazardous materials (HAZMAT) response teams to assist local authorities by providing technical advice to local incident commanders and recommending mitigation actions necessary to protect life, property, and the environment (“Solicitation”); and
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

Contract

1. Term of Contract

- 1.1 Effective Date. **November 1, 2022**, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 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 work.
- 1.2 Expiration Date. **June 30, 2024**, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2. Contractor’s Duties

The Contractor shall perform all duties described in this Contract to the satisfaction of the State.

The Contractor, who is not a State employee, shall:

- (a) Respond to hazardous material incidents occurring in the Contractor’s normal geographic area (*see Appendix C*), and, when requested by the State, the Contractor’s primary response area (*see Appendix A*) and secondary response area (*Appendix B*).
- (b) Respond to any response area in the State of Minnesota (*see Appendix B*) when directed to do so by the Commissioner (*Minnesota Rules Chapter 7514.0900, subpart 1*).
- (c) Coordinate on-scene emergency response operations of the Contractor’s Team 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 Contractor's 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 Contractor's 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 (*Minnesota Rules, Chapter 7514.0500*). For purposes of this clause, the decision to dispatch the Team will be considered made at the time the Contractor's point of contact as identified in *Appendix D* 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 hazardous materials emergency response to an incident within thirty (30) days after termination of the Contractor's Team's response (*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 as required by *Minnesota Rules Chapter 7514.1700, subparts 1 and 3*; and take appropriate measures to identify to the State the responsible person of each incident, including responsible person's social security number or federal tax identification number.
- (j) Designate one (1) primary and one (1) alternate representative to the State's Hazardous Materials Emergency Response Team Program Advisory Committee (*see Appendix F*); 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 Contractor.
- (k) Designate one (1) primary and one (1) alternate representative (*see Appendix F*) and require each representative to train in applying operating guidelines and other administrative procedures established and identified by the State's Hazardous Materials Emergency Response Team Program (*Minnesota Rules Chapter 7514.0700, subpart 2*); and require one or both representatives to instruct other Team members.
- (l) Maintain and store emergency response vehicle(s) and equipment, whether loaned to the 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 of each incident, including responsible person's social security number or federal tax identification number.
- (n) Maintain the required composition of a Hazardous Materials Emergency Response Team, including the availability for immediate response of three (3) members minimum certified to the levels of hazardous materials technician response and training. The State recommends maintaining a level of five (5) members for immediate response; and the Contractor 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.
- (o) Respond to incidents and assist local authorities at the scene of a hazardous materials incidents by providing reasonable 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.

- (p) Asses an incident, develop and recommend mitigation strategies, and assist with response operations (Minnesota Rules Chapter 7514.0900, subpart 4).

The Contractor shall not subcontract any work, duties or tasks pursuant to this Contract.

3. Representations and Warranties

- 3.1 Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, the State is empowered to engage such assistance as deemed necessary.
- 3.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.
- 3.3 Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.

4. 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.

5. Payment

5.1 Consideration. The State will pay for all services performed by the Contractor under this Contract as follows:

- (a) **Compensation.** The State will pay the Contractor up to but not exceeding **Forty Thousand and 00/100 Dollars (\$40,000.00)** for the period commencing November 1, 2022, and ending June 30, 2023, and **Sixty Thousand and 00/100 Dollars (\$60,000.00)** for the period commencing July 1, 2023, and ending June 30, 2024. The Contractor will be paid for expenses for the following costs:
- 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) Contractor may deviate from its budget corresponding to the six categories identified in Clause 5.1(a), increasing and decreasing amounts between categories as needed with the exception of Category 5, Administration. The State and Contractor mutually agree Administration costs shall not be increased more than 20% without prior written approval from the State's Authorized Representative.
- (c) **Total Obligation.** The total obligation of the State for all compensation to the Contractor corresponding to Clause 5.1(a) shall not exceed **One Hundred Thousand and 00/100 Dollars (\$100,000.00)**.
- (d) **Emergency Response Reimbursement.** In addition to the Compensation identified in Clause 5.1(a) and Clause 5.1(c), the State will reimburse the Contractor 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) **Hazmat 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 [See Clause 2(n) above]. Hourly rates will be determined by and in accordance with the Contractor's collective bargaining agreement(s) corresponding to personnel.
- 2) **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 five (5) persons for HAZMAT team. Hourly rates will be determined by and in accordance with the Contractor's collective bargaining agreement(s) corresponding to personnel.
- 3) **Vehicle Operating Costs**
 - a) Hazardous Materials Response Teams shall be reimbursed up to \$150.00 per hour for operational costs associated with State-supplied Hazardous Materials Emergency Response apparatus.
 - b) Any additional Hazardous Materials Response Team support apparatus shall be reimbursed up to \$100.00 per hour which must be approved prior to use by the State Fire Marshal's State Teams Coordinator or Supervisor.
- 4) **Cost of Consumable Supplies Used**
Cost for consumable supplies used shall not exceed the actual costs incurred; and Contractor must submit an itemized invoice for actual costs to be reimbursed.
- 5) **Costs of Repair or Replacement of Damaged or Destroyed Equipment**
Contractor must submit an itemized invoice for actual costs incurred. If cost is estimated to exceed \$500.00, Contractor 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, Contractor must comply with the applicable municipal bidding laws.
- 6) **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. Contractor must submit an itemized invoice for actual costs incurred.
- 7) **Administrative Costs Directly Resulting from the Emergency Response**
Up to \$500.00 per incident based on actual costs incurred. Contractor 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.
- 8) **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 Contractor must submit an itemized invoice for actual costs to be reimbursed.
- 9) **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 Contractor must submit an itemized invoice for actual costs to be reimbursed.
- 10) **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 Contractor must submit an itemized invoice for actual costs to be reimbursed.
- 11) **Other Direct Costs Incurred by the Contractor as a Result of the Emergency Response**
Costs for this item shall not exceed the actual costs incurred; and Contractor must submit

an itemized invoice for actual costs to be reimbursed.

5.2 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 according to the following schedule:
- 1) **Contractor Compensation [Clauses 5.1(a) and 5.1(b)].** Contractor shall submit a completed Contractor Compensation Packet at least once every three months but not more frequently than once per month for reimbursement of costs identified in Clauses 5.1(a) and 5.1(b). Contractor shall submit a final invoice for the period commencing November 1, 2022, and ending June 20, 2023, no later than July 31, 2023. Contractor shall submit a final invoice for the period commencing July 1, 2023, and ending June 30, 2024, no later than July 31, 2024. The State will process properly completed Reimbursement Packets for compensation within thirty (30) days of receipt.
 - 2) **Emergency Response Reimbursement [Clause 5.1(d)].** Contractor 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 5.1(d). The State will process properly completed claim forms for reimbursement within thirty (30) days of receipt.

6. **Authorized Representatives**

State's Authorized Representative.

The State's Authorized Representative is the individual below, or his successor, and has the responsibility to monitor the Contractor's performance.

Name: James G. Smith, State Fire Marshal
Address: Department of Public Safety; State Fire Marshal Division
445 Minnesota Street, Suite 145
Saint Paul, MN 55101
Telephone: 651.201.7402
Email Address: james.g.smith@state.mn.us

Contractor's Authorized Representative.

The Contractor's Authorized Representative is the individual below, or his successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must notify the State in writing/email within ten (10) business days.

Name: Quentin Brunsvold, Fire Chief
Address: Marshall Fire Department
201 East Saratoga Street
Marshall, MN 53258
Telephone: 507-530-7623
Email Address: quentin.brunsvold@ci.marshall.mn.us

7. **Exhibits and Appendices**

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

Exhibit A: Contract Terms

- Exhibit B: Insurance Terms and Requirements
- Appendix A: Primary Response Area
- Appendix B: Secondary Response Area
- Appendix C: Normal Geographic Jurisdiction
- Appendix D: Point-of-Contact for Team Dispatching
- Appendix E: Designees of State’s Authorized Representative
- Appendix F: Primary and Alternate Representatives to the HAZMAT Response Team

1. State Encumbrance Verification
Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Print name: _____

Signature: _____

Title: _____ Date: _____

SWIFT PO Number: _____

3. State: Department of Public Safety; State Fire Marshal Division
With delegated authority

Print name: _____

Signature: _____

Title: _____ Date: _____

2. Contractor: City of Marshall
The Contractor certifies that the appropriate person has executed this Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: _____

Signature: _____

Title: _____ Date: _____

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

Print name: _____

Signature: _____

Title: _____ Date: _____

Exhibit A: Contract Terms

1. Prompt Payment and Invoicing

Prompt Payment. The State will pay the Contractor pursuant to Minn. Stat. § 16A.124 which requires payment within 30 days following receipt of an undisputed invoice or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." The payment will only be made for services actually performed that have been accepted by the State's Authorized Representative, and that meet all terms, conditions, and specifications of the Contract and the solicitation document.

2. Assignment, Amendments, Waiver, and Contract Complete

- 2.1 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 authorized parties or their successors.
- 2.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.
- 2.3 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.
- 2.4 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.

3. Termination

- 3.1 Termination for Convenience. 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 for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 3.2 Termination for Breach. The State may terminate this Contract, with cause, upon 30 days' written notice to Contractor of the alleged breach and opportunity to cure. If after 30 days, the alleged breach has not been remedied, the State may immediately terminate the Contract.
- 3.3 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 payment of the services addressed within this Contract. Termination must be by written 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 dedicated 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. This notice will be provided within a reasonable time of the State's receiving notice.

4. Force Majeure

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

5. Indemnification

5.1 In the performance of this Contract, the Indemnifying Party 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 Indemnifying Party's:

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

The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent permitted by law. 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 Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

5.2 Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

6. 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.

7. Foreign Outsourcing of Work Prohibited

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by all subcontractors.

8. Data Disclosure

Under Minn. Stat. § 270C.65, subd. 3, and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and 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.

9. Government Data Practices

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, 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 Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. 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 and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

10. Intellectual Property Rights

10.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

- 10.1.1 "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials,

whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract.

10.1.2 "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

10.1.3 "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes Documents.

10.2 Ownership. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this Contract*. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

10.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor's Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

10.4 Obligations.

10.4.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.

10.4.2 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.

10.4.3 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11. Copyright

The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

12. Contractor's Documents

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

13. State Audits

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six (6) years from the expiration or termination of this Contract.

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, information posted on corporate or other websites, 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. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's 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.

16. Contingency Fees Prohibited

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

17. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053)

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor 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 vendor'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.

18. Non-discrimination (in accordance with Minn. Stat. § 181.59)

The Contractor will comply with the provisions of Minn. Stat. § 181.59.

19. 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.

20. Affirmative Action Requirements

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

- 20.1 Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.
- 20.2 General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
- 20.3 Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- 20.3.1 The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 20.3.2 The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- 20.3.3 In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- 20.3.4 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- 20.3.5 The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- 20.4 Consequences. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of

compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

20.5 Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

21. Equal Pay Certification

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

22. Other Provisions

- 22.1 Primary Response Area. The Contractor's primary response area is described in Appendix A.
- 22.2 Secondary Response Area. The Contractor's secondary response area is described in Appendix B.
- 22.3 Contractor's Geographic Jurisdiction. The Contractor's normal geographic jurisdiction is described in Appendix C.
- 22.4 Point of Contact for Team Dispatching. The Contractor agrees to maintain a single point-of-contact who will be used by the State to dispatch Contractor. The Contractor's single point-of-contact is identified in Appendix D.
- 22.5 Designees of the State's Authorized Representative. Appendix E identifies the designees of the State's Authorized Representative and their delegated authority to act on his behalf.
- 22.6 Contractor's Primary and Alternate Representatives. The Contractor's primary and alternate representatives are identified in Appendix F.
- 22.7 State Owned and Provided Equipment. When applicable, the State agrees to loan or provide the Contractor the equipment required for Contractor to execute its duties, responsibilities and tasks pursuant to this Contract in accordance with the following terms and conditions:
 - 22.7.1 Contractor may use and maintain possession of the equipment (see clause 22.9).
 - 22.7.2 The State will retain title and legal ownership of all loaned, capitalized equipment loaned to the Contractor and will provide for its replacement (see clause 22.9).
 - 22.7.3 The State will administer any manufacturer's warranty claims of state-owned equipment that may result during Contractor's use of the equipment.
 - 22.7.4 The State will, upon request of Contractor, train at least one person designated by Contractor in the proper handling, use and maintenance of the equipment used pursuant to this Contract. The State shall provide the training to Contractor's personnel without cost, other than travel and related expenses which shall be paid by the Contractor. The Contractor will bear the cost of any travel and related expenses incurred the Contractor's employee(s) attending training. The Contractor's team member trained by the State in the proper use, handling and maintenance of the equipment will provide training to Contractor's team members and other appropriate personnel as designated by the Contractor.
 - 22.7.5 The State will, upon request of Contractor, provide Contractor with technical assistance as needed regarding the proper handling, use and maintenance of the equipment.
 - 22.7.6 The Contractor will maintain all necessary inventory control records on the equipment used pursuant to this Contract.
 - 22.7.7 The Contractor will make the equipment available to personnel authorized by the State when required for inventory, inspection or auditing purposes.
 - 22.7.8 The Contractor will keep and maintain the equipment in proper operating condition.
 - 22.7.9 The Contractor will re-supply all disposable, expired and consumable components originally provided by the State, and will supply and other needed disposable and consumable components not provided by State, at Contractor's expense.

- 22.7.10 The Contractor will be responsible for the cost of repairing or replacing equipment that has been lost, or as determined by the State, damaged due to abuse, misuse or other cause outside normal wear and tear, incurred in the routine proper use. The State will determine whether the equipment will be repaired or replaced.
- 22.7.11 The Contractor will be responsible for the cost of routine maintenance and repair according to the manufacturer's recommendations.
- 22.7.12 The Contractor will return capitalized equipment purchased by the State to the State upon termination, expiration, or cancellation of the contract. The Contractor will ship or deliver such items to the State at the Contractor's expense.
- 22.7.13 The Contractor will not permit the equipment to be tampered with or operated by individuals who are not trained in its proper handling and operation.
- 22.7.14 The Contractor agrees to provide secure, climate-controlled storage for all equipment used pursuant to this Contract.
- 22.8 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) within sixty (60) days after execution of this contract.
 - 22.8.1 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.
 - 22.8.2 Contractor may recover the cost of such insurance from the State in accordance with Clause 4, Section 5.1, Item a(5) of this contract.
 - 22.8.3 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).
- 22.9 The parties mutually agree that all capital equipment purchased with State funds remains the sole property of the State of Minnesota.
- 22.10 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 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 § 299.A.52.

23. Survival of Terms

The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that expressly states or by its nature shall survive, shall survive.

Exhibit B: Insurance Terms and Requirements

1. Notice to Contractor

- 1.1 The Contractor is required, if requested by the State, to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Contract.
- 1.2 Contractor shall not commence work under the Contract until it has obtained all the insurance described below. Contractor shall maintain such insurance in force and effect throughout the term of this Contract.
- 1.3 The failure of the Contractor to provide a Certificate of Insurance, if requested by the State, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the State to the Contractor to provide such insurance.
- 1.4 The State reserves the right to immediately terminate this 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.

2. Notice to Insurer

- 2.1 The Contractor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 2.2 Insurance certificates, if requested by the State, shall be addressed as follows:
Nolan Pasell, State Fire Marshal Division
Email Address: Nolan.Pasell@state.mn.us

3. Additional Insurance Conditions. The following apply to the Contractor or the Contractor's subcontractor:

- 3.1 Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor's performance under this Contract.
- 3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State 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.
- 3.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles.
- 3.4 If Contractor is self-insured, a Certificate of Self-Insurance shall be submitted to the State prior to beginning work pursuant to this Contract.
- 3.5 Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.
- 3.6 Contractor's insurance companies must either: (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota; or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.
- 3.7 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.

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

- 4.1 **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 – applying to 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

State of Minnesota named as an Additional Insured, to the extent permitted by law

- 4.2 **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.

Evidence of the subcontractor's insurance shall be filed with the Contractor.

- 4.3 **Workers' Compensation Insurance.** Statutory Compensation Coverage. Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:

\$100,000 – Bodily Injury by Disease per employee
\$500,000 – Bodily Injury by Disease aggregate
\$100,000 – Bodily Injury by Accident

The Contractor certifies it is in compliance with Minnesota Statutes § 176.181, subdivision 2, pertaining to workers' compensation insurance coverage.

Pursuant to Minnesota Administrative Rules 7514.2000, Liability and Workers' Compensation Coverage, for the purposes of Minnesota Statutes Chapter 176, and section 3.736, workers' compensation coverage for the Contractor's HAZMAT team members by the State is initiated once a team is activated by the State, for operations authorized by the State, and the team is outside its normal geographic jurisdiction as identified in Appendix C.

- 4.4 **Professional Liability, Errors, and Omissions Insurance.** This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 - per claim or event
\$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a

higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

**APPENDIX A
PRIMARY RESPONSE AREA**

The Contractor's primary response area is described as follows:

The entire Minnesota counties of: Big Stone, Swift, Lac qui Parle, Chippewa, Yellow Medicine, Renville, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, Jackson

**APPENDIX B
SECONDARY RESPONSE AREA**

The Contractor's secondary response area is described as follows:

The entire State of Minnesota.

**APPENDIX C
NORMAL GEOGRAPHIC JURISDICTION**

The Contractor's normal geographic jurisdiction is described as follows:

The corporate limits of the City of Marshall, Minnesota

**APPENDIX D
POINT-OF-CONTACT FOR TEAM DISPATCHING**

The Contractor's single point-of-contact for purposes of State Hazardous Materials Response Team dispatching is:

Lyon County Dispatch Center

24-hour emergency telephone number: 507-537-7000

**APPENDIX E
DESIGNEES OF STATE'S AUTHORIZED REPRESENTATIVE**

**State's Authorized Representative:
James G. Smith, Fire Marshal**

**Designees of State's Authorized Representative:
John Kreuser, State Emergency Response Teams Coordinator
John Ehret, Fire Service Supervisor
Amanda Swenson, Chief Deputy Fire Marshal**

Authority of Designees:

Clause 5, Section 5.1(a)	Authorization to approve Compensation
Clause 5, Section 5.1(b)	Authorization to approve increase of Contractor's budgeted administration costs more than 20%
Clause 5, Section 5.1(d)	Authorization to approve "Emergency Response Reimbursement" claims in excess of \$5,000.00
Clause 5, Section 5.2(a)	Authorization to certify (approve) acceptance on each invoice submitted by Contractor corresponding to Clause 5.1
Clause 5, Section 5.2(a)	Authorization to certify (approve) acceptance on each claims form submitted by Contractor corresponding to Clause 5, Section 5.1(d), Emergency Response Reimbursement
Exhibit A, Clause 9	Authorization to give instructions to the Contractor 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: _____

Date: _____

**James G. Smith
State Fire Marshal**

**APPENDIX F
PRIMARY AND ALTERNATE REPRESENTATIVES
TO THE HAZMAT RESPONSE TEAM**

The Contractor's primary and alternate representatives to the Hazardous Materials Regional Response Team are:

Primary Representative:

Quentin Brunsvold

Telephone Numbers: 507-530-7623 (work)

Email Address: quentin.brunsvold@ci.marshall.mn.us

Alternate Representative:

Brian Swalboski

Telephone Number: 507-828-9868

Email Address: Brian.Swalboski@ci.marshall.mn.us