

STATE OF MINNESOTA JOINT POWERS AGREEMENT

This agreement is between the State of Minnesota, acting through its Commissioner of Commerce ("State") and **[GIVE THE FULL NAME OF THE GOVERNMENTAL UNIT]** ("Governmental Unit").

Recitals

WHEREAS, under Minnesota Statute § 471.59, the State is empowered to enter into agreements with other governmental units to jointly or cooperatively exercise any power common to the contracting powers or similar powers, as deemed necessary; and

WHEREAS, the Commissioner of Administration delegated his authority under Minnesota Statute § 16C.144 to the Commissioner of Commerce by means of an Interagency Agreement and Memorandum of Understanding dated as of April 26, 2012; and

WHEREAS, the State wishes to authorize the Governmental Unit to utilize the Minnesota Department of Commerce's Guaranteed Energy Savings Program (GESp) under Minnesota Statute § 16C.144 as a contracting option for guaranteed energy savings projects;

NOW, THEREFORE, the State and the Governmental Unit hereby agree as follows:

Agreement

1 Term of Agreement

- 1.1 **Effective date:** **[SPELL OUT FULL DATE (e.g., April 1, 2001)]**, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** When all contractual obligations of the parties to a GESp project pursuant to Minnesota Statute § 16C.144 have been satisfied.

2 Agreement between the Parties

This Agreement authorizes the Governmental Unit to utilize any contracting options available to the Commissioner of Commerce under Minnesota Statute § 16C.144 for a guaranteed energy savings program.

- 2.1 The State will provide the Governmental Unit with technical services to implement a GESp project in facilities owned by the Governmental Unit, including: project development assistance, project implementation oversight, and annual project performance evaluation assistance.
- 2.2 The Governmental Unit agrees to:
 - 2.2.1 Utilize the State GESp documents including: Master Contract, Lease Purchase Agreement, and Site-Specific Request for Proposal (RFP). All contract document changes shall be pre-approved by the State. The Site-Specific RFP shall be issued to all Contractors under the master contract program.
 - 2.2.2 Maintain data current in the State's B3 Energy Benchmarking website for the facilities included in the GESp.
 - 2.2.3 Provide the State with a copy of the Annual Savings Measurement & Verification Report within 30 days of receipt from Contractor.
 - 2.2.4 The use of stipulated savings and project inflation assumptions in the project pro forma must be reviewed by the State and approved in writing by the Governmental Unit.
 - 2.2.5 Designate a qualified owner's representative to oversee design and implemented measures in the terms and conditions of the work orders.
 - 2.2.6 Review plans and specifications and/or scope of work documents prior to providing authorization to proceed with the work.

3 Payment

Neither party to this Joint Powers Agreement shall pay any financial consideration to the other party.

4 Authorized Representatives

The State's Authorized Representative is **Peter Berger**, Guaranteed Energy Savings Program Manager, 612-296-2459, or his/her successor.

The Governmental Unit's Authorized Representative is **[NAME, TITLE, ADDRESS, TELEPHONE NUMBER]**, or his/her successor.

5 Assignment, Amendments, Waiver, and Contract Complete

- 5.1 **Assignment.** The Governmental Unit may neither assign nor transfer any rights or obligations under this agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.
- 5.2 **Amendments.** Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 5.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or its right to enforce it.
- 5.4 **Contract Complete.** This agreement contains all negotiations and agreements between the State and the Governmental Unit. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

6 Indemnification

In the performance of this contract by the Governmental Unit, or Governmental Unit's agents or employees, the Governmental Unit must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the state, to the extent caused by Governmental Unit's:

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

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Governmental Unit may have for the State's failure to fulfill its obligation under this contract.

7 State Audits

Under Minnesota Statute § 16C.05, subdivision 5, the Governmental Unit's books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement.

8 Government Data Practices

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minnesota Statute Ch. 13, as it applies to all data provided by the State under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this agreement. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data referred to in this clause by either the Governmental Unit or the State.

9 Venue

Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

10 Termination

10.1 **Termination.** The State or the Governmental Unit may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

10.2 **Termination for Insufficient Funding.** The State may immediately terminate this agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the

Governmental Unit. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Governmental Unit will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Governmental Unit notice of the lack of funding within a reasonable time of the State’s receiving that notice.

1. STATE ENCUMBRANCE VERIFICATION

*Individual certifies that funds have been encumbered as required by Minnesota Statutes, Sections 16A.15 and 16C.05.
(with delegated authority)*

Signed: _____
Date: _____
CFMS: _____

3. MN DEPARTMENT OF COMMERCE

(with delegated authority)

By: _____
Title: _____
Date: _____

2. «ORGANIZATION»

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

By: _____
Title: _____
Date: _____

Distribution:
MN Department of Commerce
Governmental Unit
State’s Authorize Representative – Photo Copy

By: _____
Title: _____
Date: _____