

**G. O. Compliance Checklist for  
USE CONTRACTS**

Project Name: \_\_\_\_\_  
Location of Project: \_\_\_\_\_  
Name of Public Entity: \_\_\_\_\_  
Name of Counterparty: \_\_\_\_\_  
Name of Use Contract: \_\_\_\_\_

The following definitions apply for the purpose of this checklist:

Allowable Payments – (i) payments made by the Counterparty to the Public Entity to reimburse the Public Entity for ordinary and necessary expenses related to the operation and maintenance of the Facility and amounts that the Public Entity has advanced under the Use Contract because of the Counterparty’s failure to make any payments required for the operation and maintenance of the Facility, and (ii) the receipt of any insurance payments that are required to be used to restore or replace the damaged portion of the Facility.

Commissioner – the commissioner of Minnesota Management and Budget, or his/her designee.

Commissioner’s Order – the “Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” dated July 30, 2012.

Counterparty – the entity that will be the user of the Facility under the Use Contract.

Facility – the real property and, if applicable, structures in which the Public Entity will possess an ownership interest and will be used by the Counterparty under the Use Contract.

GO Compliance Law – Minn. Stat. Sec. 16A.695.

GO Bonds – State general obligation bonds whose proceeds were or will be used to acquire and/or better the Facility.

Governmental Program – a governmental program established or authorized by law and established by official action of the Public Entity, for which the Use Contract is being used.

Periodic Fixed Fee – a stated dollar amount for services rendered for a specified period of time. The stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of the Facility, such as the Consumer Price Index.

Public Entity – the public entity that will grant the operation of the Facility to the Counterparty under the Use Contract.

Renewal Option – a provision under which the Counterparty has a legally enforceable right to renew the Use Contract.

Use Contract – a lease, management agreement, research agreement, naming rights agreement, cell tower agreement, or other agreement between the Public Entity and the Counterparty, under which the Counterparty acquires from the Public Entity the right to use and operate the Facility.

**Requirements Imposed by the  
GO Compliance Law and the Commissioner's Order**

The following sets forth the requirements that must be satisfied for all Use Contracts for "state bond financed property" (i.e., property acquired or bettered in whole or in part with the proceeds of GO Bonds), in order for the Use Contract to comply with the requirements contained in the GO Compliance Law and the Commissioner's Order. "N/A" means not applicable.

**I. PUBLIC OWNERSHIP**

- A. Is the Public Entity a county, town, city, school district or other municipal or public corporation or political subdivision of the state authorized by law to enter into contracts? Yes \_\_\_\_\_  
No \_\_\_\_\_

(See Minn. Const. art. XI, Sec. 5(a) and Commissioner's Order Sec. 1.02)

- \* If yes, the statutory reference for the status of the Public Entity is \_\_\_\_\_  
If no, specify the Use Contract section/paragraph numbers that indicate what the Public Entity is: \_\_\_\_\_

- B. Is one of the following provisions satisfied (i.e., one of the following questions must be answered "Yes")? Yes \_\_\_\_\_  
No \_\_\_\_\_

1. Is the Public Entity the fee owner of all of the Facility? Yes \_\_\_\_\_  
(See Minn. Const. art. XI, Sec. 5(a) and Commissioner's Order Sec. 1.02) No \_\_\_\_\_  
N/A \_\_\_\_\_

- \* If the Public Entity is not the fee owner of all of the Facility, specify the Use Contract section/paragraph numbers that indicate who owns the various parts of the Facility: \_\_\_\_\_

2. Does the Public Entity possess a long-term lease or easement for all of the Facility that is for a term that is equal to or greater than the following length of time? Yes \_\_\_\_\_  
No \_\_\_\_\_  
N/A \_\_\_\_\_

- (i) 125% of the useful life of the structures that are a part of the Facility if the Facility includes any structures,  
(ii) 37.5 years if the Facility consists only of real property,  
(iii) Such shorter period of time that is authorized by a Minnesota statute, rule or session law, and has been consented to by the Commissioner.

(Cite applicable statute, rule or session law: \_\_\_\_\_)

- \* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

3. If the Public Entity is the fee owner of only a portion of the Facility, does it possess a long-term lease or easement for Yes \_\_\_\_\_  
No \_\_\_\_\_

the portion it does not own that is for a term equal to or greater than the following length of time? N/A \_\_\_\_\_

- (i) 125% of the useful life of the structures.
- (ii) 37.5 years if the Facility consists only of real property,
- (iii) Such shorter period of time that is authorized by a Minnesota statute, rule or session law, and has been consented to by the Commissioner.  
(Cite applicable statute, rule or session law: \_\_\_\_\_)

\* Use Contract section/paragraph numbers that indicate this requirement is satisfied: \_\_\_\_\_

**II. LESSOR’S STATUTORY AUTHORITY**

Does the Use Contract contain a provision delineating the statutory authority under which the Public Entity is entering into and executing the agreement? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Sec. 4.01 of the Commissioner’s Order)

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

**III. STATUTORY CITATION FOR GOVERNMENTAL PROGRAM:**

Does the Use Contract contain a provision which: (i) states that it is being executed and entered into in order to carry out a Governmental Program, (ii) describes the Governmental Program, and (iii) provides a statutory citation for the Governmental Program? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 2(b) and Commissioner’s Order 4.02(a))

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

**IV. OVERSIGHT BY LESSOR**

Is one of the following provisions satisfied (i.e., one of the following questions must be answered “Yes”)? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 2(b) and Commissioner’s Order Sec. 4.02(c))

- 1. Does the Use Contract require the Counterparty to provide the Public Entity an initial program evaluation report and annual, or more frequent, budgets for the Governmental Program to be operated in the Facility, which show program revenues and expenses, and some way to annually determine that the Counterparty is using the Facility for the Governmental Program? Yes \_\_\_\_\_  
No \_\_\_\_\_  
N/A \_\_\_\_\_

\* Use Contract section/paragraph numbers that satisfy

this requirement: \_\_\_\_\_

2. Does the Use Contract provide for some other form of oversight by the Public Entity of the Governmental Program to be operated in the Facility? Yes \_\_\_\_\_  
No \_\_\_\_\_  
N/A \_\_\_\_\_

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

**V. TERM OF THE USE CONTRACT**

- A. Is one of the following provisions satisfied (i.e. one of the following questions must be answered “Yes”)? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 2(b) and Commissioner’s Order Sec. 4.02(b))

1. If the Facility consists only of land, is the term of the Use Contract equal to or less than the lesser of 15 years or 50% of the term of the Public Entity’s ownership interest in the land? Yes \_\_\_\_\_  
No \_\_\_\_\_  
N/A \_\_\_\_\_

(NOTE: The Use Contract may allow renewals beyond the initial term upon a determination by the Public Entity that the use will continue to carry out the Governmental Program and that it wants the Counterparty to continue to operate the Facility.)

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

2. If the Facility consists of structures, is the term of the Use Contract equal to or less than the lesser of 50% of the useful life of such structures or 50% of the term of the Public Entity’s ownership interest in such structures? Yes \_\_\_\_\_  
No \_\_\_\_\_  
N/A \_\_\_\_\_

(NOTE: The Use Contract may allow renewals beyond the initial term upon a determination by the Public Entity that the use will continue to carry out the Governmental Program and that it wants the Counterparty to continue to operate the Facility.)

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

3. If the Facility consists of land and/or structures related to docks and wharves and related storage and training facilities, is the Use Contract structured so as to meet the standard set forth in Sec. 142(b)(1) of the Internal Revenue Code (the “IRC”) and applicable Treasury Regulations for establishing governmental ownership of docks and wharves and related storage and training facilities? Yes \_\_\_\_\_  
No \_\_\_\_\_  
N/A \_\_\_\_\_

(NOTE: The Use Contract may allow renewals beyond the initial term upon a determination by the Public Entity that the use will continue to carry out the Governmental

Program and that it wants the Counterparty to continue to operate the Facility.)

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

- B. Is the Use Contract free of any provisions that would require, either directly or indirectly, the Public Entity to renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal term, which includes but is not limited to a unilateral option to renew by the Counterparty? Yes \_\_\_\_\_  
No \_\_\_\_\_

(See Minn. Stat. Sec. 16A.695, Subd. 2(b) and Commissioner's Order Sec. 4.02(b))

[NOTE: An agreement by the Public Entity to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew the Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Public Entity to renew such Use Contract.]

- C. Is the Use Contract free of provisions that would create an impediment, either directly or indirectly, to the Public Entity deciding to not renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal? Yes \_\_\_\_\_  
No \_\_\_\_\_

(See Minn. Stat. Sec. 16A.695, Subd. 2(b) and Commissioner's Order Sec. 4.02(b))

[NOTE: See Note under paragraph B above.]

- D. Does the Use Contract contain a provision that clearly states that the Public Entity is not required to renew the Use Contract beyond the original term thereof and that the Public Entity may, at its sole option and discretion, allow the Use Contract to expire at the end of its original term and thereafter directly operate the governmental program in the Real Property and, if applicable, Facility or contract with some other entity to operate the governmental program in the Real Property and, if applicable, Facility? Yes \_\_\_\_\_  
No \_\_\_\_\_

(See Minn. Stat. Sec. 16A.695, Subd. 2(b) and Commissioner's Order Sec. 4.02(b))

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

**VI. TERMINATION OF USE CONTRACT**

- A. Does the Use Contract allow for termination by the Public Entity in the event of a default thereunder by the Counterparty? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 2(b) and Sec. 4.02(d) of the Commissioner's Order)

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

B. Does the Use Contract contain a provision under which it automatically and immediately terminates upon a termination of the Governmental Program or change in the Governmental Program that no longer allows the Public Entity to continue to own or operate the Facility for the Governmental Program? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 2(b), and Commissioner's Order Sec. 4.02(d))

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

**VII. COST OF OPERATION OF THE FACILITY**

Is one of the following provisions satisfied (i.e., one of the following questions must be answered "Yes")? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Commissioner's Order Sec. 4.02(e))

1. Does the Use Contract require the Counterparty to pay all costs of operation and maintenance of the Facility? Yes \_\_\_\_\_  
No \_\_\_\_\_  
N/A \_\_\_\_\_  
\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

2. Does the Public Entity have specific statutory authority to expend monies to operate and maintain the Facility? Yes \_\_\_\_\_  
No \_\_\_\_\_  
N/A \_\_\_\_\_  
\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

**VIII. RECEIPT OF MONIES/COMPLIANCE WITH TAX CODE**

Is at least one of the following provisions satisfied (i.e., one of the following questions must be answered "Yes")? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Commissioner's Order Sec. 4.04(a)).

1. Have all of the GO Bonds been paid in full or redeemed? Yes \_\_\_\_\_  
No \_\_\_\_\_

2. Is the Use Contract structured so that the Public Entity will not receive any monies from the Counterparty other than Allowable Payments? Yes \_\_\_\_\_  
No \_\_\_\_\_

3. Is the Counterparty an instrumentality or political subdivision of the state? Yes \_\_\_\_\_  
No \_\_\_\_\_

4. Are all of the following true of the Use Contract: (a) compensation is reasonable for services rendered and no compensation is based on a share of net profits from the operation of the Facility, (b) 95% or more of the Yes \_\_\_\_\_  
No \_\_\_\_\_

compensation payable to the Counterparty consists of a Periodic Fixed Fee, and (c) the term of the Use Contract, including all Renewal Options, does not exceed the lesser of 15 years or 80% of the reasonably expected useful life of the Facility?

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

5. Are all of the following true of the Use Contract: (a) Yes \_\_\_\_\_  
compensation is reasonable for services rendered and no No \_\_\_\_\_  
compensation is based on a share of net profits from the operation of the facility, (b) 80% or more of the compensation payable to the Counterparty is comprised of a Periodic Fixed Fee, and (c) the term of the Use Contract, including all Renewal Options, does not exceed the lesser of 10 years or 80% of the reasonably expected useful life of the Facility?

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

6. Have the provisions in the Use Contract regarding such Yes \_\_\_\_\_  
payments been submitted to and approved by the No \_\_\_\_\_  
Commissioner, and does the Use Contract contain a provision which requires the Counterparty, upon direction from the Commissioner, to take such actions and furnish such documents as the Commissioner determines to be necessary to ensure that the interest to be paid on the GO Bonds is exempt from federal taxation?

(Such action may include: (i) compliance with proceedings intended to classify the GO Bonds as a "qualified bond" within the meaning of IRC Secs. 141(e) and 145, or (ii) changing the nature and/or terms of the Use Contract so that it complies with Rev. Proc. 97-13, 1997-1 CB 632.)

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

7. Have the proceeds of the GO Bonds made available to the Yes \_\_\_\_\_  
Public Entity been used solely to provide improvements to No \_\_\_\_\_  
facilities located within a public port owned by the Public Entity for tax purposes?

\* Use Contract section/paragraph numbers that satisfy this requirement: \_\_\_\_\_

**IX. SALE OF THE FACILITY**

A. Is the Use Contract free of any provisions which would require the Public Entity to sell the Facility for an amount less than the fair market value (unless the buyer is a Minnesota political subdivision)? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 3, and Sec. 5.02(a) of the Commissioner's Order)

\* If the Use Contract contains any sale or option provisions, list Use Contract section/paragraph numbers where those provisions appear:  
\_\_\_\_\_

B. Is the Use Contract free of any provisions which would allow the Public Entity to sell the facility without the Public Entity first determining, by official action, that the Facility is no longer usable or needed to carry out the Governmental Program? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 3, and Commissioner's Order Sec. 5.02(a))

C. Is the Use Contract free of any provisions which would require or allow the Public Entity to sell the Facility without first obtaining the written consent of the Commissioner? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 3 and Commissioner's Order Secs. 5.02(a) and 5.03(a))

D. Is the Use Contract free of any provisions which would cause the manner of distribution of the proceeds of the sale to violate the provisions contained in the GO Compliance Law and the Commissioner's Order? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 3 and Commissioner's Order Sec. 5.04)

\* If the Use Contract contains any provisions regarding the distribution of the proceeds of any sale, then list the Use Contract section/paragraph numbers where those provisions appear: \_\_\_\_\_

**X. REIMBURSEMENT TO COUNTERPARTY**

Is the Use Contract free of provisions that would require the Public Entity to reimburse the Counterparty in an amount in excess of the Counterparty's investment in the land and capital improvements? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 2(b))

\* If the Use Contract contains any provisions regarding reimbursements to be made to the Counterparty, list the Use Contract section/paragraph numbers where those provisions appear: \_\_\_\_\_

**XI. COMMISSIONER'S APPROVAL OF ANY CHANGES, ADDITIONS OR MODIFICATIONS**

Is at least one of the following provisions satisfied (i.e., one of the following questions must be answered "Yes")? Yes \_\_\_\_\_  
No \_\_\_\_\_



1. Does the Use Contract contain a statement that any changes, additions or modifications of the Use Contract must be agreed to, in writing, by the Commissioner? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(See Minn. Stat. Sec. 16A.695, Subd. 2(b) and Commissioner’s Order Sec. 4.03(a))

\* Use Contract section/paragraph numbers that satisfy this requirement:  
\_\_\_\_\_

2. Does the Public Entity certify that it will not make amendments to the corresponding Use Contract that would make any response in this checklist untrue following such amendment, without seeking and receiving written consent of the Commissioner? Yes \_\_\_\_\_  
No \_\_\_\_\_

### SUMMARY

Have all of the following questions contained herein been answered “Yes”? Yes \_\_\_\_\_  
No \_\_\_\_\_  
(If the answer to this question is “No”, then the Use Contract will not be acceptable. Please note that even if all of the following questions are answered “Yes”, there still may be provisions in the submitted Use Contract that may make it unacceptable to the Commissioner.)

- |       |         |           |          |
|-------|---------|-----------|----------|
| I.    | A. .... | Yes _____ | No _____ |
|       | B. .... | Yes _____ | No _____ |
| II.   | .....   | Yes _____ | No _____ |
| III.  | .....   | Yes _____ | No _____ |
| IV.   | .....   | Yes _____ | No _____ |
| V.    | A. .... | Yes _____ | No _____ |
|       | B. .... | Yes _____ | No _____ |
|       | C. .... | Yes _____ | No _____ |
|       | D. .... | Yes _____ | No _____ |
| VI.   | A. .... | Yes _____ | No _____ |
|       | B. .... | Yes _____ | No _____ |
| VII.  | .....   | Yes _____ | No _____ |
| VIII. | .....   | Yes _____ | No _____ |
| IX.   | A. .... | Yes _____ | No _____ |
|       | B. .... | Yes _____ | No _____ |
|       | C. .... | Yes _____ | No _____ |
|       | D. .... | Yes _____ | No _____ |
| X.    | .....   | Yes _____ | No _____ |
| XI.   | .....   | Yes _____ | No _____ |

### Preparation of Checklist

This G.O. Compliance Checklist for Use Contracts was prepared by or on the behalf of the Public Entity and is submitted to the Commissioner. By preparing and submitting this checklist to the Commissioner, the party that prepared this checklist on behalf of the Public Entity hereby certifies that the information contained in this checklist is true and correct and that it accurately reflects the contents of the referenced Use Contract.

**PUBLIC ENTITY:** \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### Submittal of Use Contract to Commissioner

The GO Compliance Law and the Commissioner's Order require that all Use Contracts be submitted to the Commissioner for his/her review and approval (see Minn. Stat. Sec. 16A.695, Subd. 2(b) and Commissioner's Order Sec. 4.03(a).) The following information must be submitted to the Commissioner not less than 60 days before the proposed execution of the Use Contract (see Sec. 4.03(b) of the Commissioner's Order):

1. A statement describing, and providing the statutory citation for, the Governmental Program.
2. A statement identifying the statute under which the Public Entity is authorized to participate in the Governmental Program.
3. Counterparty's name, address, and its type of legal entity (e.g., city, county, HRA, non-profit corporation, etc.).
4. A description of the Counterparty's financial condition.
5. Reason for the Public Entity's selection of the Counterparty.
6. A copy of the plan which the Counterparty will follow in operating the Facility.
7. The Counterparty's proposed budget for operation and management of the Facility.
8. Any other information which the Counterparty believes would be helpful to the Commissioner in his/her review of the proposed Use Contract.

After the proposed Use Contract has been reviewed and approved by the state agency which will supply the proceeds of the GO Bonds to the Public Entity, the proposed Use Contract and the above listed information should be submitted directly to the Commissioner for his/her review and approval.

**FOR USE ONLY BY STATE OF MINNESOTA**

This G.O. Compliance Checklist for Use Contracts was reviewed by the following individual:

Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Department or Agency \_\_\_\_\_

Date \_\_\_\_\_

**APPROVAL OF USE CONTRACT BY COMMISSIONER**

Based upon the information contained in this G.O. Compliance Checklist for Use Contracts and the certification by the Public Entity that the information contained in this checklist is true and correct, the Commissioner consents to execution of the Use Contract.

**COMMISSIONER OF MINNESOTA  
MANAGEMENT AND BUDGET**

By: \_\_\_\_\_  
Assistant Commissioner

Date: \_\_\_\_\_