

**Joint Powers Agreement Among the City of
Saint Paul, Hennepin County and Ramsey County
("The Collaborative")**

This Agreement is made and entered into pursuant to Minnesota Statutes § 471.59, among the City of Saint Paul, Hennepin County, and Ramsey County, hereinafter collectively known as "the Collaborative."

WHEREAS, Each member of the Collaborative operates its own Business Assistance Program serving small business enterprises ("SBEs"), and/or minority-owned businesses ("MBEs"), and/or women-owned businesses ("WBEs"); and

WHEREAS, The Founding Members of the Collaborative have been jointly implementing a central certification program as a component of their Business Assistance Programs since November 1998; and

WHEREAS, On January 1, 2006, the Founding Members of the Collaborative executed a Joint Powers Agreement ("JPA") to operate the central certification program internally and to expand the scope of shared activities beyond certification for a five-year term commencing January 1, 2006, with an automatic twelve-month renewal; and

WHEREAS, The JPA expired on December 31, 2010; and

WHEREAS, Certified businesses save time and resources by the elimination of duplicate certification services, and Collaborative members agree that having a single certification process would benefit the business community.

NOW, THEREFORE, the Collaborative members agree as follows:

I. Purpose

The purpose of this Joint Powers Agreement is to describe the Collaborative organization, including the roles and responsibilities of each Collaborative member.

II. Definitions

Additional Member means a governmental organization that becomes a member of the Collaborative that is not a Founding Member, as defined in this section.

Recipient means a non-governmental organization who receives services from the Collaborative as permitted by this Agreement. A Recipient is not a Member of the Collaborative as defined herein.

Appeals Board means the individual or individuals that considers and makes a final decision regarding an appeal of a certification decision to the Lead Agency.

Business Assistance Program means the collection of programs and activities adopted by a Collaborative member to provide various technical, financial, educational, and /or other kinds of assistance to businesses within the Marketplace.

Central Certification Program Policies and Procedures Manual ("the Manual") means the set of policies and procedures adopted by the members of the Collaborative for determining whether a business meets the eligibility requirements to participate in the individual Business Assistance Programs of each Collaborative member. The Manual, as it may be amended by the Executive Committee, is incorporated herein and made a part of this Agreement by reference.

Certification means completion of the process outlined in the Manual, resulting in an applicant becoming a Certified Vendor.

Certified Vendor means a business that has successfully completed the Certification or Recertification process and has been given a designation as a SBE, MBE, and/or WBE.

Collaborative means the governmental entities that have executed this Agreement subject to changes through withdrawal and addition of members as permitted under this Agreement.

Decertification means completion of the process outlined in the Manual, resulting in a business losing its status as a Certified Vendor.

Executive Committee means the Collaborative Members that have executed a Joint Powers Agreement to operate the central certification program established pursuant to this Agreement with the duties and responsibilities as set forth in this Agreement.

Founding Member means one of the original signatories to the 1998 Joint Powers Agreement implementing a central certification program, Hennepin County, Ramsey County, the City of Minneapolis, and the City of Saint Paul, excluding members that have since withdrawn from the Collaborative.

Lead Agency, currently the City of St. Paul, means the Collaborative member designated to implement and manage the activities in the Collaborative Work Plan, day-to-day operations, and to serve as its fiscal agent.

Marketplace means the geographical area where vendors that the Collaborative members do business with are located, as agreed upon by the Executive Committee through resolution, ordinance, rule, or regulation.

Members means Founding Members and Additional Members

On-Site means a visit to the applicant's Principal Place of Business for purposes of evaluating an applicant's eligibility to become a Certified Vendor.

Principal Place of Business means the primary physical location at which or from which a business performs, is maintained, or operates.

Recertification means completion of the process outlined in the Manual, resulting in a company maintaining its status as a Certified Vendor.

Small Business Enterprise, Minority-Owned Business Enterprise, and Woman-Owned Business Enterprise or SBE, MBE, WBE means a business that meets the requirements and definitions agreed upon by the Executive Committee members through resolution, ordinance, rule, or regulation.

Substantially Similar means a certification program where the certification process meets most of the material provisions of the definitions of Marketplace, Minority-Owned Business Enterprise, Small Business Enterprise, and Woman-Owned Business Enterprise; the required length of time in business for eligible vendors; company size; and the applicable classification system for products or services as contained in the Manual.

Vendor Certification Database ("the Database") means the database of all SBEs, MBEs and WBEs who make or have made Certification requests or Recertification requests which is maintained by the Lead Agency through use of the Software.

Vendor Certification Software ("the Software") means the solution customized for the Collaborative by an independent contractor under a separate Agreement with the Lead Agency which provides the Software license to the Lead Agency and also permits the use of the Software by the Members of the Collaborative.

Work Plan means the set of activities to be undertaken by the Collaborative, including those to be performed by the Lead Agency, as mutually agreed upon and adopted by the Executive Committee on an annual basis.

III. Collaborative Organizational Description

A. Purpose

The activities of the Collaborative as described in this Agreement are intended to supplement, but not be a substitute for, the activities and Business Assistance Programs of each Collaborative member. The primary purpose of the Collaborative is to jointly engage in activities that accomplish the following goals:

1. To maximize the benefits provided to SBEs, MBEs, and/or WBEs within the resources available from the Collaborative Members;

2. To better focus Certification and outreach efforts on contracting areas that offer the best potential fit with the available Certified Vendors;
3. To leverage Collaborative resources with various community partners to better accomplish the goals of the Business Assistance Programs of the individual Collaborative Members;
4. To jointly implement outreach strategies to recruit, train, and inform SBEs, MBEs, and/or WBEs, about contracting opportunities available with Collaborative Members; and
5. To offer Certification services to businesses in the Marketplace on a "one-stop shopping" basis to increase the participation in each Member's Business Assistance Program.

B. Membership in Collaborative

1. Any "governmental unit," as defined in Minnesota Statutes § 471.59, is eligible to become an Additional Member of the Collaborative and may do so following the approval of the Lead Agency. Additional Members may be added at any time. Non-governmental organizations may receive services from the Collaborative as Recipients and may do so following the approval of the Lead Agency. Recipients may be added at any time.

2. If the Lead Agency approves an Additional Member, the proposed Additional Member shall be responsible for any extraordinary costs incurred to incorporate the Additional Member into the Database and the Collaborative Program written materials. The Executive Committee will be notified of the Additional Members and Recipients and any and all fees that are collected by the Lead Agency. The fees and costs will be applied to the Work Plan budget.

3. The Executive Committee shall have the authority to permit other governmental units as defined in Minnesota Statutes § 471.59 to become Members of the Executive Committee. Only members of the Executive Committee shall have voting or other rights. Additional Members not included in the Executive Committee shall be entitled to obtain services provided to the Collaborative Members under this Agreement at a cost to be determined.

4. Founding Members have the right to be designated as the Lead Agency.

C. Executive Committee

1. Upon the commencement of this Agreement, the Founding Members shall each designate an Individual to serve on the Executive Committee. Additional Members invited to join the Executive Committee shall also designate an Individual to serve on the Executive Committee.

2. The Executive Committee shall perform such duties as are necessary to carry out the purpose and goals described herein, including, but not limited to:
 - a. adopt a Work Plan to correspond with the duration of the Agreement, which shall, upon adoption, become a part of this Agreement by reference. Such Work Plan may be modified as needed;
 - b. oversee the implementation of the Work Plan by reviewing quarterly reports or other updates submitted by the Lead Agency;
 - c. designate, at the expiration of the Agreement, one of the Founding Members to serve as the next Lead Agency for the Collaborative;
 - d. serve as the Appeals Board or designate one or more individuals to perform this function, for Certification and Recertification actions performed by the Lead Agency; and
 - e. adopt and modify Collaborative policies and procedures.
3. The Executive Committee shall meet at least quarterly and may conduct its business in person, via teleconference, or via other electronic means.
4. Each Executive Committee member shall have one vote.
5. Decisions of the Executive Committee shall be by majority vote of the Executive Committee members in attendance, provided a quorum is present. Notwithstanding the preceding, if there are not more than three (3) Executive Committee members in the Collaborative, then the decisions shall be by unanimity vote of the Executive Committee members in attendance, provided a quorum is present. A quorum shall consist of two-thirds of the members of the Executive Committee.

IV. Collaborative Activities

The Collaborative may annually undertake a range of activities to accomplish the goals described in Section III of this Agreement. Specific activities to be performed by one, some, or all Members or by the Lead Agency shall be agreed upon by the Executive Committee and incorporated into the Work Plan. These activities may include but are not limited to the following.

A. Central Certification

1. Perform Certification and Recertification in accordance with the Manual.
2. If applications for Certification and/or Recertification exceed the Lead Agency's ability to process all of them, complete Certification and Recertification services in accordance with the list of priority commodity or service areas by mutual agreement of the Executive Committee.
3. Incorporate On-Site inspections into the Certification process on an as-needed basis, using the criteria described in the Manual.

4. Accept businesses that have been certified as SBEs, MBEs, or WBEs by another entity where the certification criteria are Substantially Similar to the vendor Certification criteria adopted by Collaborative members for Certification.

B. Information and Outreach

1. Maintain and manage a unique web site for the Collaborative to provide information about the Certification process, Certified Vendors, upcoming solicitation opportunities by Collaborative members, and other Collaborative activities.

2. Implement informational sessions and training programs to help certified vendors participate in the contracting opportunities available from Collaborative Members.

3. Participate in trade shows, vendor expos, and other activities to share information about Certification for the Collaborative and Collaborative Member contracting opportunities.

4. Provide information about Certification and other Collaborative activities to various local publications, newsletters, and web sites.

C. Other activities as may be mutually agreed upon by the Executive Committee and as resources permit.

V. Responsibilities

A. Responsibilities of Collaborative Members

Each Collaborative Member shall be responsible for the following:

1. Determining priority commodity and service areas for Certification for its individual jurisdiction;

2. Designating a contact person to work with the Lead Agency to handle day-to-day questions and issues that may arise;

3. Providing updates on contracting opportunities and needs for Certified Vendors to the Lead Agency and other Members;

4. Maintaining and distributing copies of Collaborative informational materials and application forms;

5. Contributing information for shared reporting, public outreach, the website and other purposes;

6. Notifying other Collaborative Members of the status of and changes in its Business Assistance Program to the degree that such changes affect the structure of the Collaborative or the Work Plan;

7. Making timely payment to the Lead Agency of the Member's share of costs to finance the activities in the Work Plan as identified in the annual budget.

B. Responsibilities of the Lead Agency

1. The Lead Agency shall perform and/or oversee the activities assigned to it in the Work Plan.

2. In order to carry out its responsibilities under the Work Plan, the Lead Agency shall provide or perform and may incur costs for the following:

- a. hiring staff or interns or executing contracts with outside contractors as may be needed to implement the Work Plan;
- b. monitoring and managing staff or contractors who are responsible for implementing the Work Plan, including the Certification/Recertification process, On-Site inspections, maintaining the Database and/or maintaining the website;
- c. serving as the Fiscal Agent for the Collaborative which shall include proposing and managing the approved budget for Lead Agency services, issuing invoices, collecting fees for services, and making authorized payments on behalf of the Collaborative;
- d. maintaining books, records, Collaborative information materials, and other documents related to the implementation of Lead Agency activities set forth in the Work Plan;
- e. serving as a central point of contact for public inquiries on behalf of the Collaborative;
- f. providing quarterly reports to the Executive Committee on the status of spending and activity against the Work Plan to include, but not be limited to, how many Certification and Recertification decisions were upheld or overturned by the Executive Committee upon appeal;
- g. investigating complaints made by the public or Members, with notification to the Executive Committee on an informational basis.

3. In the event that the Lead Agency determines that it is unable to perform one or more activities in the Work Plan due to an unanticipated increase in other Lead Agency activities included in the Work Plan or costs, a reduction in funding by the Members, or other unforeseen circumstances, the Lead Agency shall notify the other members of the Executive Committee as soon as possible. The Executive Committee shall meet within 10 days of such notification to determine a course of action and to adjust the Work Plan as may be necessary.

4. The Lead Agency shall notify the Executive Committee of any appeals within the timeframe specified in the Manual; provide the Executive Committee with copies of each appeal and the certification file for the appellant; convene a meeting with the appellant

and the Executive Committee or other appointed individual(s) to hear the appeal; and provide the appellant with written notification of the Executive Committee's decision within a reasonable timeframe.

5. The Lead Agency shall have the ability to offer additional, optional services to individual Collaborative Members beyond those described in this Agreement and the Work Plan. Such additional services will be mutually agreed upon by the Lead Agency and the individual Collaborative Member and contained in a separate Agreement.

VI. Costs and Payments

A. Costs

1. All costs contained in an approved Work Plan budget shall be shared among Executive Committee Members. The Lead Agency may, however, identify other sources of funding to support Collaborative activities, such as fees charged to Additional Members. The Executive Committee may review fee scale upon renewal of this Agreement.

2. The cost of any additional, optional services provided by the Lead Agency shall be the responsibility of those Collaborative Members requesting the services and is beyond the scope of this Agreement.

B. Payment

1. The Lead Agency shall invoice each Collaborative Member quarterly for its share of the Work Plan budget.

2. Each Collaborative Member shall make payment to the Lead Agency as soon as reasonably possible after receipt of the invoice, but no later than 30 days from such receipt.

3. Other Collaborative Members shall not be liable for the failure of any Collaborative Member to pay for Lead Agency services for which it is invoiced in accordance with the Work Plan budget.

4. Disputes and payment of late charges shall be governed by the provisions of Minn. Stat. § 471.425.

5. In the event that a Collaborative Member's governing body fails to appropriate adequate funds to meet its budget obligations, the Collaborative Member shall notify the other Collaborative Members as soon as possible, but within 30 days of the appropriation decision. If the Collaborative Member elects to withdraw from the Collaborative in accordance with the provisions of this Agreement, the Collaborative Member shall be responsible for its share of costs up to the date of withdrawal from the Collaborative.

VII. Software, Files, Records

- A. Each of the Executive Committee Members has full and complete access to the Software and to all documentation for the Software.

- B. Neither the Lead Agency nor any individual Collaborative member may give access to the Software or Database to any Additional Members until an Agreement is executed between the Lead Agency and the Additional Member.

- C. All records, created in relation to the subject matter of this Agreement, shall at all times be the property of the Collaborative Members.

- D. Each agreement between an independent contractor and the Lead Agency shall contain a provision that states that the contractor shall maintain and store Collaborative records and files in accordance with Minn. Stat §138.17, Minn. Stat. §15.17, and Minnesota Statutes Chapter 13.

- E. Each agreement between an independent contractor and the Lead Agency shall contain a provision that states that all information gathered by the contractor in the course of providing services is the property of the Collaborative Members and not the contractor, and that the information may not be sold, reproduced, or otherwise disseminated or transmitted in whole or in part without the prior written authorization of the affected Collaborative Members.

VIII. Miscellaneous

- A. Term. The term of this Agreement is the period from January 1, 2011 through December 31, 2012, unless terminated sooner pursuant to the terms of this Agreement. The term shall automatically renew annually, unless a majority of the Collaborative Members withdraw or the Collaborative is dissolved as described in this Agreement or a Collaborative Member declines to renew the Agreement..

- B. Hold Harmless and Indemnification. The herein parties expressly acknowledge and agree that a party shall not be responsible for the acts or omissions of any other party.

Each party herein agrees that it will be responsible for the acts or omissions of its officials, agents, and employees, and the results thereof, in carrying out the terms of this Agreement, to the extent authorized by law and shall not be responsible for the acts/omissions of the other parties and the results thereof. The liability of each party shall be governed by applicable provisions of the Minnesota Torts Claims Act, Minnesota Statutes Chapter 466, and other applicable state and federal laws, including common law.

Each party herein agrees to defend, hold harmless, and indemnify other parties, their officials, agents, and employees, from any liability, loss, or damages the other parties may suffer or incur as a result of demands, claims, judgments, or costs arising out

of or caused by the indemnifying party's negligence in the performance of its respective obligations under this Agreement. This provision shall not be construed nor operate as a waiver of any applicable limitation of liability, defenses, immunities, or exceptions by statute or common law.

In the event of any claims or actions filed against the Collaborative and/or any individual party herein for any of the activities for which the Collaborative is responsible, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or stack separate statutory liability caps from the Collaborative and/or individual party. The Collaborative is intended as a separate liability entity which limits the liability of the individual party and the Collaborative as a whole.

C. Assignment. No party to this Agreement shall assign, delegate or transfer any rights or obligations under this Agreement without prior written consent of the other parties.

D. Amendment. Any amendment or modification to this Agreement shall be in writing and shall not be effective until executed by all parties to this Agreement.

E. Entire Agreement. This Agreement contains the entire Agreement between the parties with regard to the matters set forth herein.

F. Withdrawal. A Collaborative Member may withdraw from the Collaborative upon 60 days written notice to all other Collaborative Members. A withdrawing Collaborative Member shall meet all of its responsibilities up to the date of withdrawal.

G. Termination. This Agreement shall terminate:

1. upon written agreement of all active Collaborative Members;
2. by operation of law or court order; or
3. when there are no more than two Collaborative Members.

H. Dissolution. The Collaborative shall dissolve upon action by authorized representatives of a majority of the active Collaborative Members. Unless the parties otherwise agree at the time of dissolution, all remaining Collaborative assets and debt, if any, at the time of dissolution shall be equally distributed among the then current members.

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IN WITNESS WHEREOF, the City of Saint Paul, Hennepin County, and Ramsey County have executed this Agreement on the dates indicated below.

City of Saint Paul

Executed:

Director, Office of Financial Services

Mayor Christopher B. Coleman or Designee

Date: _____

Approved as to form:

Assistant City Attorney

Funding: 124-11254

Director, Department of Human Rights and Equal Economic Opportunity

Hennepin County

Reviewed by the County Attorney's
office

Assistant County Attorney

Date: _____

COUNTY OF HENNEPIN
STATE OF MINNESOTA

By: _____
Chair of Its County Board

ATTEST: _____
Deputy/Clerk of County Board

And: _____
Assistant/Deputy/County Administrator

Ramsey County

Victoria Reinhardt, Chair
Ramsey County Board of Commissioners

Chief Clerk
Ramsey County Board of Commissioners

Date: _____

Approval Recommended:

Julie Kleinschmidt, County Manager
Approved as to form and insurance:

Assistant County Attorney

Funds are available:

Account Number: _____

Budgeting and Accounting