

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

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

WHEREAS, Each member of the Collaborative operates its own Business Assistance Program serving small business enterprises ("SBEs"), including, but not limited to, small minority-owned businesses ("MBEs"), and/or small women-owned businesses ("WBEs"); and

WHEREAS, Each member of the Collaborative may, in the future, wish to serve disadvantaged businesses such as Veteran-Owned Businesses, businesses owned by persons with disabilities, or other small businesses that experience barriers to participation in the local marketplace; 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

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.

Appeals Board means the individuals who consider and make the final decision regarding an appeal of a certification decision to the Lead Agency. The Appeals Board may consist of the same individuals who serve on the Executive Board.

Business Assistance Program means the collection of programs, initiatives and activities adopted by a Collaborative member to provide assistance to certified small businesses within the Marketplace.

Central Certification Program Policies and Procedures means the set of policies and procedures adopted by the members of the Collaborative for determining whether a business meets the small business certification eligibility requirements. Specifically, the Central Certification Program Policies and Procedures consist of the following documents:

- 1) The CERT Certification Policies and Procedures, which outline the rules for making determinations on certification for prospective SBE's;
- 2) The CERT Certification on-site interview form;
- 3) The CERT Work Plan.

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

CERT Work Plan ("the Work Plan") means the set of strategic initiatives to be undertaken by the Collaborative, including those to be performed by the Lead Agency, as mutually agreed upon and adopted by the Executive Board.

Certification means completion of the process outlined in the Central Certification Program Policies and Procedures resulting in an applicant becoming a Certified Small Business Enterprise (SBE) with the option to further designate woman owned business (WBE), minority owned business (MBE), or other designation such as Veteran owned business enterprise (VBE), business owned by persons with disabilities, or other such designations as the Collaborative may determine necessary.

Certified Vendor is a business that has successfully completed the Certification or Recertification process.

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

Decertification means completion of the process outlined in the Central Certification Program Policies and Procedures, resulting in a business losing its status as a Certified SBE.

Executive Board means the individuals designated by the Members to carry out the purposes of the CERT Collaborative. The Executive Board's duties are to vote on policy, coordinate outreach, approve the certification of SBEs, MBEs, WBEs, VBEs, and to make resources available to accomplish the objectives of the CERT Collaborative as outlined in this Agreement and the Work Plan.

Fiscal Agent is the Collaborative Member responsible for various financial duties for the benefit of the Collaborative. These duties include but are not limited to:

- invoicing Collaborative Members and Subscribers for fees to run the CERT program,
- invoicing service providers, such as vendors to run the certification database, business technical assistance for certified businesses,

- paying contractors for services performed for the benefits of the Collaborative,
- negotiating and signing contracts on behalf of the Collaborative.

Founding Member is one of the original signatories to the 1998 Joint Powers Agreement implementing the Central Certification Program, including Hennepin County, Ramsey County, the City of Minneapolis, and the City of Saint Paul, but excluding members that have since withdrawn from the Collaborative.

Lead Agency, currently the City of Saint Paul, is 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 CERT SBEs have their primary place of business, as agreed upon by the Executive Board through resolution, ordinance, rule, or regulation.

Members or Collaborative Members means Founding Members and Additional Members

Subscriber is a non-governmental or governmental organization who receives services from the Collaborative as permitted by this Agreement. Governmental organizations become subscribers pursuant to the requirements of Minn. Stat. § 471.59. A Subscriber is not a Member of the Collaborative as defined herein.

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.

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. Create new policy through the Executive Board to maximize the benefits provided to SBEs, MBEs, WBEs, or VBEs within the resources available from the Collaborative Members;
 2. Focus and streamline certification and outreach efforts on contracting areas that offer the best potential fit with the available Certified SBEs;
 3. Leverage Collaborative resources with various community partners to better accomplish the goals of the Business Assistance Programs of the individual Collaborative Members;
 4. Implement outreach strategies to recruit, train, and inform SBEs, MBEs, WBEs, and/or VBEs, about contracting opportunities available with Collaborative Members;

5. 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;
6. Help local small businesses grow and thrive. The Collaborative will identify specific objectives to assist CERT SBE, MBEs, WBEs, and VBEs in the work plan. The specific objectives will generally fall within the following efforts:
 - a. Providing central certification to help increase the visibility of CERT businesses;
 - b. Increasing access to business capital;
 - c. Providing resources such as training, workshops, and open houses to increase access to opportunities;
 - d. Where possible, aligning purchasing and contracting processes among all collaborative members to make it easier for CERT SBEs to do business with local government.

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 Subscribers and may do so following the approval of the Lead Agency. Subscribers may be added at any time. Further responsibilities of Additional Members are outlined in the CERT Work Plan.
2. If the Lead Agency approves an Additional Member, the proposed Additional Member shall be responsible for any extraordinary costs, as detailed in the Work Plan, incurred to incorporate the Additional Member into the Database and the Collaborative Program written materials. The Executive Board will be notified of the Additional Members and Subscribers 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 Board shall have the authority to permit other governmental units as defined in Minnesota Statutes § 471.59 to appoint individuals to the Executive Board. Only members of the Executive Board shall have voting or other rights. Additional Members not included in the Executive Board shall be entitled to obtain services provided to the Collaborative Members under this Agreement at a cost to be determined by the Executive Board.
4. Founding Members have the right to be designated as the Lead Agency.

C. Executive Board

1. Upon commencement of this Agreement, all Founding and Additional Members shall designate an individual to serve on the Executive Board. When Additional Members are added to the Collaborative, the Additional Members shall designate an individual to serve on the Board as soon as practicable upon executing an agreement to become a Member.
 2. The Executive Board 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;
 - b) oversee the implementation of the Work Plan by reviewing updates submitted by the Lead Agency;
 - c) serve as the Appeals Board or designate one or more individuals to perform this function, for Certification and Decertification actions performed by the Lead Agency; and
 - d) adopt and modify Collaborative policies and procedures.
 3. The Executive Board shall schedule meetings at least quarterly and may conduct its business in person, via teleconference, or via other electronic means.
 4. Each Executive Board member shall have one vote.
 5. Decisions of the Executive Board:
 - a) Decisions of the Executive Board shall be by majority vote of the Executive Board members in attendance, provided a quorum is present.
 - b) Notwithstanding the preceding, if there are not more than three (3) Executive Board members in the Collaborative, then the decisions shall be by unanimous vote of the Executive Board members in attendance, provided a quorum is present. A quorum shall consist of two-thirds of the members of the Executive Board.
 - c) In the event that there are fewer than three (3) Executive Board members in the Collaborative, decisions shall be made only by an affirmative vote from each member.
 - d) The Executive Board has authority to change any of the Policies and Procedures by a majority vote.
- D. Subscribers are not members of the Collaborative, but receive services from the Collaborative in exchange for a rate of subscription. The rate of subscription is to be determined by the Members and detailed in the Work Plan. Services to a Subscriber are agreed upon between the Subscriber and the Lead Agency.

IV. Collaborative Activities

The Collaborative shall 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 Board 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. Incorporate On-Site inspections into the Certification process on an as-needed basis, using the criteria described in the Manual.

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 SBEs 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. Develop and implement policy regarding outreach, certification, and development of local small businesses, woman-owned businesses, minority-owned businesses, veteran-owned businesses, and/or other local small businesses that experience barriers to participation in the local marketplace.

D. Other activities as may be mutually agreed upon by the Executive Board and as resources permit.

V. Responsibilities

A. Responsibilities of Collaborative Members Each Collaborative Member shall be responsible for the following:

1. Determining Certification priority 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, including responding to standard technical inquiries from prospective Certified Vendors;
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. Arranging and coordinating outreach events targeting certified vendors and potentially eligible certified vendors, as detailed in the Work Plan;
6. Contributing information for shared reporting, public outreach, the website and other purposes;
7. 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;
8. 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;
9. Assisting in Collaborative activities as outlined in the Work Plan, including but not limited to researching new policy.

B. Responsibilities of the Lead Agency

1. The Lead Agency is responsible for Central Certification, which includes implementing Certification procedures, evaluating applications for Certification, approving or denying Certification based on business eligibility, and conducting on-site investigations as necessary.
 - a) The Lead Agency shall employ staff to process Certifications, which is paid for out of membership dues from the Members and Subscribers to the Collaborative.
 - b) The Lead Agency is solely responsible for this function.
 - c) If applications for Certification and/or Recertification exceed the Lead Agency's ability to process all of them, the Lead Agency will complete Certification and Recertification services in accordance with the list of priority commodity or service areas by mutual agreement of the Executive Board.
2. The Lead Agency serves 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.
3. The Lead Agency shall maintain books, records, Collaborative information materials, and other documents related to the implementation of Lead Agency activities set forth in the Work Plan.
4. The Lead Agency serves as a central point of contact for public inquiries on behalf of the Collaborative.
5. The Lead Agency shall perform and/or oversee the activities assigned to it in the Work Plan.
6. 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 maybe needed to implement the Work Plan as allowed in the budget for the CERT Collaborative;

- 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. providing reports to the Executive Board 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 Board upon appeal;
 - d. investigating complaints made by the public or Members, with notification to the Executive Board on an informational basis.
7. In the event that the Lead Agency determines that it is unable to perform one or more of its duties due to an unanticipated increase in other Lead Agency activities included in the Work Plan or costs, a reduction in funding by the Members and/or Subscribers, or other unforeseen circumstances, the Lead Agency shall notify the other members of the Executive Board as soon as possible. The Executive Board shall meet as soon as practicable after such notification to determine a course of action and to adjust the Work Plan as may be necessary.
8. The Lead Agency shall notify the Executive Board of any appeals within the timeframe specified in the Manual; provide the Executive Board with copies of each appeal and the certification file for the appellant; convene a meeting with the appellant and the Executive Board or other appointed individual(s) to hear the appeal; and provide the appellant with written notification of the Executive Board's decision within a reasonable timeframe.
9. 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. All costs contained in an approved Work Plan budget shall be shared among Executive Board Members. The Lead Agency may, however, identify other sources of funding to support Collaborative activities. The financial structure of the Collaborative shall be detailed in the Work Plan, updated when needed, and approved annually.
- B. 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.
- C. 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 35 calendar 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 calendar 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 Board 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 for twelve months, beginning on the date of execution of this agreement, automatically renewing annually, unless a majority of the Collaborative Members withdraw, or the Collaborative is dissolved as described in this Agreement.
- B. Hold Harmless. The parties herein 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.

In the event of any claims or actions filed against the Collaborative, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or stack separate statutory liability caps from the Collaborative. The Collaborative is intended as a separate liability entity which limits the liability of the individual party and the Collaborative as a whole. If a claim or action is filed against the Collaborative, the Collaborative Members will share the costs of retaining legal representation, separate and apart from legal representation the Collaborative Members have as individual entities.

- 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 calendar 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; or
 - 2. by operation of law or court order.
- H. Counterparts: The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- I. Electronic Signature. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's

failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

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

City of Saint Paul

Executed:

Director, Office of Financial Services

Mayor Melvin Carter, or Designee

Date: _____

Approved as to form:

Assistant City Attorney

Funding:

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

Jim McDonough, 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
Finance

City of Minneapolis

Executed:

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first written above.

FOR THE CITY:

Dushani Dye
Finance Officer

Approved as to Form

By: _____
Assistant City Attorney

Department Head responsible for Administering and Monitoring this Contract
Approved as to Form