

Cost-Share Funding Agreement Form

(For Green Business Program Contracts up to \$100,000)

Green Business Cost Share

Attachment A:

This contract only needs to be filled out if you are awarded the cost share award. This attachment is included so that you are aware of the contract terms before applying.

City Contract Number (Assigned by the City Contract Management Office): _____

City Department responsible for the Contract:

I. CONTRACT

THIS CONTRACT is made between the City of Minneapolis, Minnesota, a home rule charter city, referred to as the "City" and _____, referred to as the "Business", for **Green Business Program activities** to be provided under the terms of this agreement (the "Contract").

II. SCOPE OF PROJECT

a. Business will, by [DATE]:

- A. **Project Scope.** [Description of Work (i.e. Install a totally enclosed paint booth at its facility located at [address] and reformulate all paint and coatings used in its business to low hazardous air pollutant ("HAP") and HAP free formulations] (collectively, "the Project") in accordance with the recommendations made in "[Name of Proposal]", (Attachment A), attached and incorporated herein, and as detailed in Business' Green Business Program application, (Attachment B), which are a part of and incorporated into this agreement. [Statement about

For reasonable accommodations or alternative formats, please contact the Minneapolis Health Department at 612-673-2301 or health@minneapolismn.gov. People who are deaf or hard of hearing can use a relay service to call 311 at 612-673-3000. TTY users call 612-673-2157 or 612-673-2626.
Para asistencia 612-673-2700 - Rau kev pab 612-673-2800 - Hadio aad Caawimaad u baahantahay 612-673-3500.

results to be obtained from the Work, i.e. The paint booth installation shall reduce Particulate matter ("PM") by 518 pounds per year. The paint, coatings and solvent reformulations shall reduce total HAP emissions by at least 3,000 pounds per year.]

- B. *Contractor.* Business shall select a contractor or contractors for [installation of a paint booth to be constructed in conformity with Attachments A and B]. Business will ensure that contractor(s) comply with Section XI of this Agreement. Business is responsible for obtaining all required permits and approvals.
- C. *Documentation Requirements.* Business must submit the following items to the City's program manager upon completion of the work and prior to [DATE]:

- Before and after photographs from the same vantage point highlighting the Project.
- Proof of final inspection by the City of Minneapolis for any work requiring a City permit.
- Final invoice from the contractor and/or vendor showing the total Project cost.
- Proof of payment paid to contractor and/or vendor. Business should be totally satisfied with the work or product performance before paying.
- A lien waiver, which is a statement issued by the contractor and/or vendor that advises the client that they, the contractor/vendor, have been paid in full for the total project cost, are satisfied with the compensation for the work they performed, or the products provided, and waive their right to place any liens on the property for work completed/products provided.

If more than one contractor is used, there must be complete sets of the items listed above for each contract/contractor/vendor.

- [Type of Test Results i.e MnTAP] test results showing before and after [Type of measure .i.e. total PM and HAP emission in pounds].
- Other: [List other results required here]

III. REIMBURSEMENT

Upon receipt of the required documentation under Section II, Paragraph C, City will reimburse Business for [% amount] of the cost of the work described in the Scope of Work up to a maximum reimbursement amount of \$[xxxx.xx].

IV. EFFECTIVE DATE AND TERMINATION DATE

This Contract shall be in full force and effect from through unless otherwise extended by the City or terminated earlier under Paragraph XV, Cancellation, Default and Remedies.

V. CONTRACT ADMINISTRATION

All provisions of this Contract shall be coordinated and administered by the person identified in Paragraph XVI.

VI. AMENDMENTS

All amendments shall be in writing, signed by the City and the Business. If the amendment or a subsequent contract causes the compensation to exceed \$75,000, the amendment must be approved by the Mayor and City Council.

VII. INDEPENDENT BUSINESS

The Business and its employees shall not be an employee of the City. It is agreed that the Business and its employees will act as an “independent contractor” and acquire no rights to tenure, workers’ compensation benefits, unemployment compensation benefits, medical and hospital benefits, sick and vacation leave, severance pay, pension benefits or other rights or benefits offered to employees of the City, its departments or agencies. The parties agree that the Business and its employees will not act as the agent, representative or employee of the City.

VIII. BUSINESS’ INSURANCE

If any insurance is required under this Contract, the Business shall maintain that insurance identified in Exhibit A which is attached and made part of this Contract. Any entity that fails to indemnify and hold the City harmless pursuant to Section X and Section XIV, shall provide insurance coverage regardless as to whether or not the entity is self-insured.

IX. DATA PRACTICES

The Business agrees to comply with the Minnesota Government Data Practices Act (the “Act”) and all other applicable state and federal laws relating to data privacy or confidentiality. The Business and any of Business’ sub-contractors retained to provide services under this contract shall comply with the Act and be subject to penalty for non-compliance as though they were a governmental entity.

The Business will immediately report to the City any requests from third parties for information relating to this Contract.

The City agrees to promptly respond to inquiries from the Business concerning data requests.

The Business agrees to hold the City, its officers, and employees harmless from any claims resulting from the Business unlawful disclosure or use of data protected under state and federal laws.

In the event Business maintains its data is classified “not public data” pursuant to the Act and should not be disclosed and the City agrees to respond as such to requests from third parties for information, Business agrees to fully indemnify, defend, keep, and hold free and harmless from any and all liability the City, its agents, officials, and employees, including, but not limited to, penalties, and awarded damages, reimbursement of any costs and expenses and reasonable attorneys’ fees that the City may incur in handling, denying, or defending such claims.

X. COMPLIANCE WITH THE LAW

Business agrees to abide by the requirements and regulations of The Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101-12213) (ADA), the Minnesota Human Rights Act (Minn. Stat. Ch. 363A), the Minneapolis Civil Rights Ordinance (Ch. 139), and Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000e). These laws deal with discrimination based on race, gender, disability, religion and with sexual harassment. In the event the Business has questions concerning these requirements, the City agrees to promptly supply all necessary clarifications. Violation of any of the above laws can lead to termination of this Contract.

XI. AUDITS

The Business agrees that the City, the State Auditor or any of their duly authorized representatives, at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt and transcribe any books, documents, papers, records and accounting practices and procedures that are directly relevant and involve transactions relating to this Contract for a period of six years after the final payment is made by the City to the Business.

XII. SUCCESSORS AND ASSIGNS

The terms and conditions contained in this Contract shall become the obligation of and the rights in here to the benefit of the parties’ successors and assigns.

XIII. LIABILITY AND INDEMNITY

- a. The City agrees to defend, indemnify and hold harmless the Business against any and all claims, liability, loss, damage or expense arising under the provisions of this Contract and caused by the negligent acts or omissions of the City or its employees.
- b. The Business agrees to defend, indemnify and hold harmless the City against any and all claims, liability, loss, damage or expense arising under the provisions of this Contract and caused by the negligent acts or omissions of the Business or its employees, agents and any subcontractors.

XIV. CANCELLATION, DEFAULT AND REMEDIES

Either party to this Contract may cancel this Contract upon thirty (30) days written notice, except in instances where the Business fails to fulfill its obligations under this Contract in a proper and timely manner, or otherwise violates the terms of this Contract, the City has the right to terminate this Contract, if the Business has not cured the default after receiving seven (7) days written notice of the default.

Notwithstanding section XIV or this section XV, the Business shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by the Business. The rights or remedies provided here shall not limit the City, in case of any default, error or omission, by the Business, from asserting any other right or remedy allowed by law, equity, or by statute. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the City or the Business under law.

XV. NOTICES

Any notice or demand, authorized or required under this Contract shall be in writing and shall be sent by certified mail to the other party as follows:

To the Business (*include complete mailing address here*):

To the City (*include complete mailing address here*):

, Department Head

, Contract Manager

XVI. INTELLECTUAL PROPERTY

Each party acknowledges and agrees that each party is the sole and exclusive owner of all right, title, and interest in and to its services, products, software, source and object code, specifications, designs, techniques, concepts, improvements, discoveries and inventions including all intellectual property rights thereto, including without limitations any modifications, improvements, or derivative works thereof, created prior to, or independently, during the term of this Contract. This Contract does not affect the ownership of each party's pre-existing, intellectual property. Each party further acknowledges that it acquires no rights under this Contract to the other party's pre-existing intellectual property.

XVII. BILLBOARD ADVERTISING

Ordinance 544.120 prohibits the use of City or City-derived funds to pay for billboard advertising as a part of a City project or undertaking.

XVIII. CONFLICT OF INTEREST/CODE OF ETHICS

Pursuant to Section 15.250 of the City's Code of Ordinances, both the City and the Business are required to comply with the City's Code of Ethics. Chapter 15 of the Code of Ordinances requires City officials and the Business to avoid any situation that may give rise to a "conflict of interest." A "conflict of interest" will arise if Business represents any other party or other client whose interests are adverse to the interests of the City.

As it applies to the Business, the City's Code of Ethics will also apply to the Business in its role as an "interested person" since Business has a direct financial interest in this Contract. The City's Code of Ethics prevents "interested persons" from giving certain gifts to employees and elected officials.

XIX. MAINTENANCE OF PROJECT RESULTS

After receiving reimbursement under Section III, Business will maintain the improvements made under the Project for a period of 2 years. If Business fails to maintain the Project in a manner such that [conditions under which City would want money back, i.e. PM releases and HAP emissions increase], the City will have a right to the return of reimbursement paid under this Contract, unless the City determines that the failure was caused by (1) a “force majeure event”; or (2) that Business notified the City in accordance with Section XXIII of the conveyance of the business. And the purchaser agrees to comply with Sections XXII and XXIII. A “force majeure event” shall include, and be limited to, acts of war, terrorism, civil disturbance, fire, flood, loss of utility services (such as water, electricity or fuel) or similar casualty that either temporarily or permanently impair maintenance of the Project during the term of the force majeure event.

XX. REPORTING

For 2 years following completion of the Project, Business will submit to the City [Type of i.e. annual emissions] test results in the following format:

[Describe test result format, criteria, etc.]

XXI. MISCELLANEOUS PROVISIONS

- 1. Severability** – If any provision of this Contract is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Contract shall be construed and enforced as if such provision had not been included.
- 2. Entirety of Contract** – This Contract and the Attachments/Exhibits thereto, constitute the entire and exclusive Contract of the parties.
- 3. Applicable Law** – The laws of the State of Minnesota shall govern all interpretations of this contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Business.

- XXII. Waiver** – Failure to enforce any provision of this Contract does not affect the rights of the parties to enforce such provision in another circumstance. Neither does it affect the rights of the parties to enforce any other provision of this Contract at any time.
- XXIII. Conflict and Priority** – This Contract shall take precedence over any attachments, exhibits or terms and conditions that may be attached to this Contract. In the event that a conflict is found between the provisions in this Contract and any attachments, the terms of the Contract shall prevail. The parties being in agreement, have caused this Contract to be signed as follows:

FOR THE BUSINESS:

By _____

Its

By signing this Contract, I represent that I have the authority to enter into and bind the Business to this Contract.

FOR THE CITY:

By _____

Department Head responsible for Administering and monitoring this contract

By signing this Contract, I represent that I have the authority to enter into and bind the City to this Contract.

Exhibit A

Cost Sharing Agreement Insurance Form

The following are the insurance requirements for the Business. Please fill in a-e. Business shall **check one box under each insurance area and sign at the bottom**. Please note: **No changes or additions can be made to this form** other than indicating self-insurance status (if applicable, also attach a letter that outlines self-insurance coverage).

- a) **1. Worker's Compensation Insurance** that meets the statutory obligations.
- Attached is certificate evidencing above insurance coverage in force as of the Contract start date.
- MN Statute Chapter 176 does not apply because Business has no employees and will not have any during the life of the Contract.
2. **Workers Compensation Insurance for non-employees** providing services under this Contract (i.e., subcontractors). Businesses are assuming full Workers Compensation coverage for uninsured sub-contractors.
- Attached is certificate evidencing Workers Compensation insurance coverage in force as of the Contract start date (either umbrella coverage by Business or separate coverage by non-employees).
- Non-employees such as subcontractors will not provide any services under this Contract.
- b) **Commercial General Liability Insurance**. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an "additional insured".
- Attached is certificate evidencing above insurance coverage in force as of the Contract start date.
- Business assumes full responsibility for any and all damages that occur as a result of this Contract.
- c) **Commercial Automobile Liability insurance** covering all owned, non-owned and hired automobiles.
- Attached is certificate evidencing above insurance coverage in force as of the Contract start date.
- Business' personal auto liability insurance coverage addresses the risk. Attached is a letter from insurance agent stating that personal automobile insurance policy covers business usage of all automobile(s) that will be used during the life of this Contract.
- Business will not drive any automobiles while performing services under this Contract.
- d) **Professional Liability Insurance** providing coverage for the claims that arise from the errors of Business or its consultants, omissions of Business or its consultants, failure to render a professional service by Business or its consultants, or the negligent rendering of the professional service by Business or its consultants. The insurance policy must provide the protection stated for Two years after completion of work.
- Attached is certificate evidencing above insurance coverage in force as of the Contract start date.
- Businesses providing service under this Contract who do not carry professional liability insurance agree to assume full responsibility for any and all damages that occur as a result of Business' acts, errors or omissions.

Business Name (printed) _____

Business Authorized Signature _____ **Date** _____

Revised- 10/2015

Use this space for any attachments to the contract. If not needed, please delete this text/page.