

GRANT CONTRACT

This grant contract is between the State of Minnesota, acting through its **Department of Commerce** ("STATE") and **Enterprising Environmental Solutions, Inc.**, 130 Locust St, Suite 200, Harrisburg, PA 17101 ("GRANTEE").

Recitals

1. Under **Minnesota Statutes §216C.02 Subdivision 1**, the STATE is empowered to enter into this grant.
2. The STATE is in need of assistance in developing a strategic plan regarding ways to reduce energy waste.
3. The GRANTEE represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the STATE.

Grant Contract

1 Term of Grant Contract

- 1.1 **Effective date:** 03/19/2007, or the date the STATE obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
The GRANTEE must not begin work under this grant contract until this contract is fully executed and the GRANTEE has been notified by the STATE's Authorized Representative to begin the work.
- 1.2 **Expiration date:** 06/30/2007, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; 16 Data Disclosure; and Grantee's Duties.

2 GRANTEE's Duties

The GRANTEE, who is not a state employee, will execute the duties set forth in Exhibit A, incorporated herein by reference.

3 Time

The GRANTEE must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

4 Consideration and Payment

- 4.1 **Consideration.** The STATE will pay for all services performed by the GRANTEE under this grant contract as follows:
Compensation. The GRANTEE will be paid the lesser of **Forty Thousand dollars (\$40,000)** or **Fifty percent (50.0%)** of actual eligible costs incurred or in the performance of the GRANTEE's duties specified in Exhibit A.
- 4.2 **Matching Requirements.** GRANTEE certifies that the following matching requirement for the Grant will be met by GRANTEE: No less than **Fifty percent (50%)** of the total actual, eligible costs incurred in the performance of the GRANTEE's duties specified in Exhibit A.
- 4.3 **Payment and Invoices**
The STATE will promptly pay the GRANTEE after the GRANTEE presents an itemized invoice for the services actually performed and the STATE's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the schedule outlined in Exhibit A.

5 Conditions of Payment

All services provided by the GRANTEE under this grant contract must be performed to the STATE's satisfaction, as determined at the sole discretion of the STATE's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The GRANTEE will not receive payment for work found by the STATE to be unsatisfactory or performed in violation of federal, state, or local law.

6 Authorized Representative

The STATE's Authorized Representative is **Edward Garvey, Deputy Commissioner, 651-296-9325**, or their successor, and has the responsibility to monitor the GRANTEE's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the STATE's Authorized Representative will certify acceptance on each invoice submitted for payment.

The GRANTEE's Authorized Representative is **Tom Peterson, Executive Director, 703-691-2199** or their successor. If the GRANTEE's Authorized Representative changes at any time during this grant contract, the GRANTEE must immediately notify the STATE.

7 Assignment, Amendments, Waiver, and Grant contract Complete

7.1 **Assignment.** The GRANTEE may neither assign nor transfer any rights or obligations under this grant contract without the prior consent of the STATE and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this grant contract, or their successors in office.

7.2 **Amendments.** Any amendment to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

7.3 **Waiver.** If the STATE fails to enforce any provision of this grant contract, that failure does not waive the provision or its right to enforce it.

7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the STATE and the GRANTEE. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 Liability

The GRANTEE must indemnify, save, and hold the STATE, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the STATE, arising from the performance of this grant contract by the GRANTEE or the GRANTEE's agents or employees. This clause will not be construed to bar any legal remedies the GRANTEE may have for the STATE's failure to fulfill its obligations under this grant contract.

9 State Audits

Under Minn. Stat. §16C.05, subd. 5, the GRANTEE's books, records, documents, and accounting procedures and practices relevant to this grant contract are subject to examination by the STATE and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract.

10 Government Data Practices and Intellectual Property

10.1. **Government Data Practices.** The GRANTEE and STATE must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the STATE under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the GRANTEE under this grant contract. The civil remedies of Minn. Stat. §13.08 apply to the release of the data referred to in this clause by either the GRANTEE or the STATE.

If the GRANTEE receives a request to release the data referred to in this Clause, the GRANTEE must immediately notify the STATE. The STATE will give the GRANTEE instructions concerning the release of the data to the requesting party before the data is released.

10.2. **Intellectual Property Rights.** GRANTEE represents and warrants that materials produced or used under this grant contract do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. GRANTEE shall indemnify and defend the STATE, at GRANTEE's expense, from any action or claim brought against the STATE to the extent that it is based on a claim that all or part of the materials infringe upon the intellectual property rights of another. GRANTEE shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to reasonable attorneys' fees arising out of this grant contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in GRANTEE's or the STATE's opinion is likely to arise, GRANTEE shall, at the STATE's discretion, either procure for the STATE the right or license to continue using the materials at

issue or replace or modify the allegedly infringing materials. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

11 Workers' Compensation

The GRANTEE certifies that it is in compliance with Minn. Stat. §176.181, subd. 2, pertaining to workers' compensation insurance coverage. The GRANTEE's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the STATE's obligation or responsibility.

12 Publicity and Endorsement

12.1 **Publicity.** Any publicity regarding the subject matter of this grant contract must identify the STATE as the sponsoring agency and must not be released without prior written approval from the STATE's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the GRANTEE individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract.

12.2 **Endorsement.** The GRANTEE must not claim that the STATE endorses its products or services.

13. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

14.1 **Termination by the STATE.** The STATE may cancel this grant contract at any time, with or without cause, upon 30 days written notice to the GRANTEE. Upon termination, the GRANTEE will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 **Termination for Cause.** The STATE may cancel this Grant Contract immediately if the STATE finds that there has been a failure to comply with the provisions of this Grant Contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The STATE may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 **Termination for Insufficient Funding.** The State may immediately terminate this contract if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15 Data Disclosure

Under Minnesota Statutes, Section 270.66, and other applicable law, the GRANTEE consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the STATE, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the GRANTEE to file state tax returns and pay delinquent state tax liabilities, if any.

16 Minn. Stat. § 181.59

The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statutes, Sections 16A.15 and 16C.05.

Signed: R. W. By

Date: 03-15-07

CFMS Grant contract No. A99403

2. Enterprising Environmental Solutions, Inc.

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

By: B. Thull

Title: Sec/Treasurer

Date: 3/21/07

By: M. V.

Title: COO/VP

Date: 3/21/07

3. MINNESOTA DEPARTMENT OF COMMERCE

By: Albat Scintela

(with delegated authority)
Assistant to the Commissioner

Title: _____

Date: 3/26/07

Distribution:

Dept. of Commerce – State Energy Office
Enterprising Environmental Solutions, Inc.
State Representative (Copy)

Exhibit A

A. GRANTEE DUTIES:

1. Design and develop a Minnesota Climate Change Advisory Group process for launch prior to June 30, 2007, including assistance in the outreach to and formation of the Advisory Group and five Technical Work Groups and production of a detailed project work plan.
2. Provide startup planning assistance to the State of Minnesota for launch and management of the Advisory Group process.
3. Develop a comprehensive draft inventory and forecast of Minnesota greenhouse gas emissions for years 1990-2020 for review and approval by the Minnesota Climate Change Advisory Group and its Technical Work Groups.
4. Develop a catalog of existing actions by Minnesota and other states that reduce greenhouse gas emissions, including descriptions of over 300 actions for review and enhancement by Advisory Group and Technical Work Group members.
5. Develop a project website to support launch and management of the Advisory Group process.
6. Develop cost share to meet the full requirements of the Advisory Group process.
7. Prepare materials and communications for the launch of the first Advisory Group meetings.
8. Prepare materials and communications for the launch of the first rounds of Technical Work Group meetings.
9. Provide weekly coordination with the State of Minnesota agencies and the Center for Climate Strategies on work plans and preparations for meetings.
10. Eligible costs include actual costs incurred labor, fringe, travel, consultant fees, materials and supplies of the project. Other expenses may be eligible only if pre-approved in writing by the State's Authorized Representative.
11. Submit a final project status report to the State.
12. Submit a final project invoice to the State.

13. GRANTEE SCHEDULE

GRANTEE shall complete the aforementioned tasks according to the following schedule:

All tasks 06/30/2007