

AGREEMENT
between the
NATIONAL JOINT POWERS ALLIANCE® (NJPA)
and the
**STATE OF OHIO, DEPARTMENT OF
ADMINISTRATIVE SERVICES (DAS)**

ARTICLE 1. PREAMBLE

1.1 This Agreement, is made effective the date of execution by and among the National Joint Powers Alliance® (herein referred to as NJPA) having its principal office located at 200 First Street Northeast, Staples, Minnesota 56479 and the State of Ohio, Department of Administrative Services (DAS) having its principal office located at 4200 Surface Road, Columbus, Ohio 43228

1.2 In consideration of the mutual covenants contained herein, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

ARTICLE 2. PURPOSE AND INTENT

2.1 The purpose of this Agreement is to establish a participation agreement between DAS and NJPA for products and services offered by the NJPA relating exclusively to the Indefinite Quantity Construction Contract system also known as EZIQC in Ohio.

2.2 The intent of this Agreement is to define guidelines for the responsibilities of NJPA and DAS as they relate to this Agreement.

ARTICLE 3. BACKGROUND

3.1 NJPA is a municipal agency engaged in the process of, among other things, creating competitively bid cooperative contract purchasing opportunities for its members. NJPA accomplishes this by 1) inviting bids resulting in procurement contracts created in compliance with the competitive bidding requirements of the State of Minnesota, and 2) offering the use of those contracts to Members through the use of "Joint Powers" laws of the State of Minnesota and other states.

ARTICLE 4. DEFINITIONS

- 4.1 **DAS**-As used herein, all references to DAS shall mean the Ohio Department of Administrative Services.
- 4.2 **OH AGENCY**-Any governmental entity located in the State of Ohio.
- 4.3 **NJPA**-National Joint Powers Alliance® (NJPA). As used herein, all references to NJPA shall mean and include NJPA as organized pursuant to M.S. 123A.21.
- 4.4 **NJPA Contracts**-NJPA Contracts are various active contracts established by NJPA for the procurement of goods and services relating exclusively to the Indefinite Quantity Construction Contract system also known as EZIQC. by NJPA and NJPA Members.
- 4.5 **Vendor**-A provider of products and/or services to NJPA and NJPA Members pursuant to NJPA Contracts.
- 4.6 **Contract Sales**-All sales, net of returns and allowances, made by a Vendor relating to NJPA Contracts held by that Vendor as of the date reported as collected by Vendor, and for which all appropriate sums have been paid to NJPA.
- 4.7 **Ohio Cooperative Procurement Venture (OCPV)**- OCPV is a program initiated by the State of Ohio providing various contract cooperative purchasing opportunities to its various members. OCPV is funded by an OCPV fee in the amount of 0.75% (three quarters of one percent) of the total value of goods and services delivered through said contracts and which is funded by the OH Agencies utilizing said contracts. .

ARTICLE 5. DAS RESPONSIBILITIES

- 5.1 DAS will provide certain operational and promotional activities inside the State of Ohio designed to highlight the value of contract purchasing through NJPA.
- 5.2 DAS will identify a point of contact person responsible for communication directly with NJPA with respect to this Agreement; and
- 5.3 DAS will be invited to:
- 5.3.1 Participate with NJPA in the development of an Invitation For Bid and/or Request For Proposal by dedicating appropriate amounts of time and talent to that effort; and
- 5.3.2 Participate with NJPA in the analysis of bids received and the development of recommendations by dedicating appropriate amounts of time and talent to that effort.

5.3.3 Participate with NJPA in the market research process by identifying participants in market segments to be bid and contacting those participants in an effort to learn how their industry works and therefore further refine the NJPA Bid process.

ARTICLE 6. NJPA RESPONSIBILITIES

6.1 NJPA will maintain the goals and intent of DAS and represent DAS 's values at the highest level by following the applicable bidding, contracting, and oversight procedures; and

6.2 NJPA will manage the development of marketing material in cooperation with DAS and Vendors by providing general marketing support, guidance and assistance; and

6.3 OCPV fee: Beginning with NJPA Contracts awarded in the State of Ohio after the execution of this Agreement, NJPA will, with regard to projects involving OH Agencies:

6.3.1 "Gross Up" each Awarded Contractor's bid multiplier sufficiently to remit the proceeds of such action to DAS in the amount of 0.75% (three quarters of one percent) of the total final value of goods and services delivered through said NJPA Contracts; and

6.3.2 NJPA will receive the funds created by the action

6.3.3 NJPA will provide a quarterly sales report and payment of OCPV fee revenue share within 45 days of the end of any calendar quarters (March, June, September and December). OCPV Fees will be paid on a cash basis.

6.3.4 NJPA will forward all OCPV Fees to DAS to the address provided below:

Ohio Department of Administrative Services Finance
General Services Division Office of Procurement Services – State Purchasing
4200 Surface Road, Columbus, Ohio 43228

6.4 NJPA will provide ongoing marketing assistance to DAS; and

6.5 NJPA will communicate with authorized contracted Vendors to assist in marketing of this relationship to the DAS and its various agencies and other states through sales training and other direct contact; and

6.6 NJPA will follow the bidding and contracting procedures and oversight required of it in the State of Minnesota; and

6.7 NJPA will establish a national Member Advisory Board which will include a representative(s) from DAS; and

6.8 NJPA will continually communicate with DAS to maintain overall focus and marketing strategy and to facilitate communication between all parties to this Agreement.

ARTICLE 7. AUDITS

7.1 NJPA agrees that the staff of DAS, or their designated representative(s), may audit NJPA records to establish total compliance with this Agreement. DAS, OH AGENCIES and NJPA will make every reasonable effort to fairly and equitably resolve any discrepancies which may arise to the satisfaction of both NJPA and DAS. DAS will provide at least twenty (20) days' notice of an audit.

ARTICLE 8. TERM AND REVIEW

8.1 **Term** This continuing Agreement shall continue in force until termination by the parties. There will be an optional annual review of terms and conditions, as mutually agreed to by the parties of this Agreement.

8.2 **Performance Marketing.** Performance criteria will be determined jointly by NJPA, and DAS. Both parties reserve the right to review the endorsement and promotional activities of each other with respect to said criteria for the purpose of determining the sufficiency of those efforts. Either party reserves the right to terminate the Agreement upon sixty (60) days written notice based on any substantiated unsatisfactory review. Both parties will attempt to avoid an unsatisfactory review by assisting each other in achieving success.

8.3 **Termination.** This Agreement shall terminate immediately upon the occurrence of anyone of the following events:

8.3.1 **Material Breach.** The failure of either NJPA or DAS to remedy a material breach of this Agreement within sixty (60) days of receipt of notice from either party specifying in reasonable detail the nature of such breach; or

8.3.2 **Participation Restrictions.** Receipt of written notification from any court of competent jurisdiction determining this Agreement, or any Vendor Contract offered or selected is in violation of the law shall be cause for termination with respect to any contract in question, or

8.4 **Voluntary Termination.** Written sixty (60) day notice is required for termination of this Agreement under voluntary conditions.

8.5 **Rights and Obligations upon Termination.** Termination of this Agreement shall not release either party from any obligation incurred prior to termination.

8.6 **Notices.** All communications shall be in writing and, except as otherwise provided herein, shall be considered to have been duly served if deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, and addressed to the respective party at its address set forth in the preamble of this Agreement. Any party may change their address by giving written notice and stating their new address. Such a change of address shall become effective on the seventh (7th) day after such notice is duly served.

8.7 **Governing Law, Jurisdiction and Attorney's Fees.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Minnesota. Any dispute arising out of this Agreement shall be adjudicated in a court of competent jurisdiction to the objector. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and reasonable attorney's fees from the other party.

ARTICLE 9. GENERAL CONDITIONS

9.1 **Assignment.** No party to this Agreement shall have the right to assign or otherwise transfer its rights and obligations under this Agreement except with the prior written consent of all other parties. Any successor in interest by merger, by operation of law, assignment, purchase or otherwise of the entire entity of any party shall not diminish the ability of the remaining parties to bring action or collect damages. Any prohibited assignment shall be invalid.

9.2 **Relationship.** Each party is an independent entity under the terms of this Agreement. No party, by virtue of this Agreement, will have any right, power, nor authority to act for or create any obligation, expressed or implied, on behalf of the other party. Except as otherwise provided, or as may hereafter be established by a written Agreement executed by authorized representatives of the parties, all operational expenses incurred by either party will be borne by the party incurring the expense.

9.3 **Liability.** Each party agrees that it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law.

9.4 **Binding Effect.** This Agreement binds and inures to the benefit of the parties hereto, and their respective successors and permitted assigns.

9.5 **Entire Agreement.** The individuals signing this Agreement hereby represent that they are authorized, on behalf of their respective organizations, to execute this Agreement and the Agreement contains the entire understanding between the parties concerning its subject matter.

9.6 **Severability.** In the event that any of the terms of this Agreement are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement. This Agreement shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial harm to, or where the invalid or unenforceable provisions compromise an integral part of, or are otherwise inseparable from the remainder of this Agreement.

9.7 **Waiver.** Failure by either party to take action or assert any right hereunder shall not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

9.8 **Amendments.** This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, other than by written amendment signed by all parties.

9.9 **Execution and Delivery of Documents.** Each of the parties hereto, his or her heirs, legal representatives, successors and assigns, shall follow through to fully execute and deliver signed documents which are necessary to carry out and effectuate the terms and conditions of this Agreement.

9.10 **Incorporation of Recitals.** The parties acknowledge that the stated recitals are true and correct and are hereby incorporated by reference. The parties hereto have entered into this Agreement in reliance upon the recitals set forth herein together with the remaining covenants, terms and conditions of this Agreement.

9.11 **Trademarks.** DAS shall have the right during the term of this Agreement to use NJPA's trademarks in advertising and promoting this Agreement subject to prior written approval of NJPA. Said written approval shall not be unreasonably withheld. NJPA shall have the right during the term of this Agreement to use the trademarks of DAS in advertising and promoting this Agreement subject to the prior written approval of DAS. Said written approval shall not be unreasonably withheld. Both parties agree to stop the use of the other's trademarks and logos and any joint marketing materials immediately upon issuance/receipt of any notification of termination.

9.12 **Relationship of Parties.** This Agreement is not a contract of employment. The relationship between NJPA and DAS is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective organizations. Except as provided elsewhere in this Agreement, neither party may be held liable for acts of omission or commission of the other party, and neither party is authorized or has the power to obligate other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.

ARTICLE 10. AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year referenced below.

DAS

NJPA

By: _____
Robert Blair

By:  _____
Authorized Signature Signed

Title: DAS Director

Title: EXECUTIVE DIRECTOR

Date: _____

Date: 4/15/11