

Aitkin County Board of Commissioners
Request for County Board Action/Agenda Item Cover Sheet



To: Chairperson, Aitkin County Board of Commissioners Date: May 3, 2013

Via: Patrick Wussow, County Administrator

From: Terry Neff, Environmental Services Director

Title of Item:

Joint Powers Agreement with the MPCA

Requested Meeting Date: May 14, 2013 Estimated Presentation Time: 10 min

Presenter: Terry Neff, Environmental Services Director

Type of Action Requested (check all that apply)

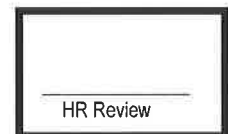
- For info only, no action requested
- For discussion only with possible future action
- Let/Award Bid or Quote (attach copy of basic bid/quote specs or summary of complex specs, each bid/quote received & bid/quote comparison)
- Approve/adopt proposal by motion
- Authorize filling vacant staff position
- Request to schedule public hearing or sale
- Request by member of the public to be heard
- Item should be addressed in closed session under MN Statute _____
- Approve under Consent Agenda
- Adopt Ordinance Revision
- Approve/adopt proposal by resolution (attach draft resolution)
- Other (please list) _____

Fiscal Impact (check all that apply)

- Is this item in the current approved budget? Yes No (attach explanation)
- What type of expenditure is this? Operating Capital Other (attach explanation)
- Revenue line account # that funds this item is: _____
- Expenditure line account # for this item is: _____

Staffing Impact (Any yes answer requires a review by Human Resources Manager before going to the board)

- Duties of a department employee(s) may be materially affected. Yes No
- Applicable job description(s) may require revision. Yes No
- Item may impact a bargaining unit agreement or county work policy. Yes No
- Item may change the department's authorized staffing level. Yes No



Supporting Attachment(s)

- Memorandum Summary of Item
- Copy of applicable county policy and/or ordinance (excerpts acceptable)
- Copy of applicable state/federal statute/regulation (excerpts acceptable)
- Copy of applicable contract and/or agreement
- Original bid spec or quote request (excluding complex construction projects)
- Bids/quotes received (excluding complex construction projects, provide comparison worksheet)
- Bid/quote comparison worksheet
- Draft County Board resolution
- Plat approval check-list and supporting documents
- Copy of previous minutes related to this issue
- Other supporting document(s) (please list) _____

Provide (1) copy of supporting documentation NO LATER THAN Wednesday at Noon to make the Board's agenda for the following Tuesday. (If your packet contains colored copies, please provide (4) paper copies of supporting documentation as we do not have a color printer or copier.) Items WILL NOT be placed on the Board agenda unless complete documentation is provided for the Board packets.

Aitkin County Environmental Services Planning and Zoning
209 Second Street NW
Room 100
Aitkin, MN 56431
Phone: 218-927-7342
Fax: 218-927-4372



MEMORANDUM

DATE: May 3, 2013
TO: Aitkin County Board of Commissioners
FROM: Terry Neff, Environmental Services Director
RE: Joint Powers Agreement with MPCA

In 2011, the Minnesota Pollution Control Agency (MPCA) adopted new SSTS Rules that require an Advanced Designer (AD) and Advanced Inspector (AI) for septic systems that are 2500 gallons per day (gpd) or larger. To acquire the AD or AI license wouldn't be worth the time, effort, or cost, for the couple of systems we would permit in a year.

Due to the small number of the septic systems installed in the state each year that are 2500 gpd or larger, the MPCA has created a joint powers agreement (see attached sample Agreement) that Local Governmental Units can enter into to recover 75% of the cost to contract with licensed AD's and AI's. Jim Ratz, Aitkin County Attorney, has reviewed the Agreement and finds it to be acceptable (see attached e-mail).

At the May 14, 2013, Aitkin County Board of Commissioners meeting, I will be asking for approval to enter into a Joint Powers Agreement with the MPCA for these services.

If you have any questions prior to the meeting, please contact me at 218-927-7342 or by e-mail at tneff@co.aitkin.mn.us.

enclosures

c:\ctybrd\ctybrd2013

Terry Neff

From: Jim Ratz [jratz@co.aitkin.mn.us]
Sent: Wednesday, May 01, 2013 2:24 PM
To: 'Terry Neff'
Subject: RE: JPA template final draft

Terry,

I have reviewed the proposed agreement between the county and the MPCA, and find the format to be acceptable.

If you have any questions, please feel free to contact my office.

Thanks,
Jim

-----Original Message-----

From: Terry Neff [<mailto:tneff@co.aitkin.mn.us>]
Sent: Wednesday, May 01, 2013 8:48 AM
To: 'Jim Ratz'
Subject: JPA template final draft

Jim,

Attached is a Joint Powers Agreement between the MPCA and participating counties. The Agreement is for Advanced Designer and Advanced Inspector services for counties that do not have these individuals on staff. The advanced designer and inspector license is for ISTS that are 2500 gallons per day and larger. We permit very few of these systems - 2 at the most in any given year and often times no systems in a given year.

In the Agreement, the state will pay for 75% of the cost of the Advanced Individuals services with County. The County will pick up the remaining 25% cost of the review and inspection for the system, this 25% will be done through permit fees.

Please review the Agreement and I will then put it on the Board agenda for final approval. Let me know if you have any questions. Thanks!

Terry

STATE OF MINNESOTA

JOINT POWERS AGREEMENT

This Agreement is between the State of Minnesota, acting through its commissioner of the **Minnesota Pollution Control Agency**, 520 Lafayette Road North, St. Paul, MN 55155 ("State" or "MPCA") and <County>, <address> ("Local Governmental Unit" (LGU)).

Recitals

1. Under Minn. Stat. § 15.061 and 471.59, Subd. 10, the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of work that requires proper location, design, installation, use and maintenance of an individual subsurface sewage treatment system (SSTS).
3. The LGU represents that it is duly qualified and agrees to perform all services described in this Agreement to the satisfaction of the State.

Agreement**1 Term of Agreement**

- 1.1 **Effective date:** <date>, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.

The LGU must not begin work under this Agreement until this Agreement is fully executed and the LGU has been notified by the State's Authorized Representative to begin the work. Any work performed prior to execution of the Agreement is not eligible for funding.

- 1.2 **Expiration date** <date>, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2 LGU's Duties

The LGU, who is not a state employee, will use an MPCA-approved Advanced Inspector to conduct work in accordance with Minn. Rules 7080, 7081, and 7083 adopted in 2008 that requires proper location, design, installation, use and maintenance of an individual subsurface sewage treatment system (SSTS) with a design flow of 2,500 gallons per day or more that protects the public health, safety, general welfare, and the environment by the discharge of adequately treated sewage to the groundwater. The MPCA has approved Advanced Inspectors that will review the project design and provide a final action document certifying whether the new system meets the requirements in Minn. Rules.

LGU will provide to the MPCA one of the following as a final action document for payment approval to be obtained:

- Certificate of Compliance, or Operating Permit;
- Project Denial;
- Notice of Project Withdrawal; or
- Other similar documentation used for project completion.

The list of MPCA-approved Advanced Inspectors that will review the project design and provide a final action document certifying that the new system meets the requirements in Minn. Rules can be found at:

http://www.pca.state.mn.us/index.php?option=com_k2&view=item&id=2265

Attachment A of this Agreement provides the eligible options for an LGU to be eligible for reimbursement and is attached and incorporated into this Agreement.

3 Eligible & Ineligible Expenses

Attachment B of this Agreement explains Eligible & Ineligible Expenses and is attached and incorporated into this Agreement.

4 Payment

The State may pay up to 75 percent of the work performed by an MPCA-approved Advanced Inspector for each project performed by an LGU under this Agreement. The total obligation of the State will not exceed \$1,000,000.00 to be split between all LGUs under this program.

- (A) **Compensation.** The State may pay an LGU up to 75 percent of the work performed per project by an MPCA approved Advanced Inspector upon approval of a final action document being submitted and approved by the MPCA.
- (B) **Invoices.** The State will pay the LGU after the LGU presents an itemized invoice that includes the total and a final action document (Certificate of Compliance, or Operating Permit, Project Denial, notice of Project Withdrawal or Other similar documentation used for project completion) for the services actually performed by an Advanced Inspector and the State's Authorized Representative accepts and approves the invoiced services. Invoices will reference the SWIFT Agreement Number, Purchase Order Number and the name of the State's Authorized Representative and must be submitted upon completion of each project to:

Minnesota Pollution Control Agency
Accounts Payable
520 Lafayette Road North
St. Paul, MN 55155-4194

Or electronically at: mpca.ap@state.mn.us

5 Amendments, Waiver, and Contract Complete

- 5.1 **Amendments.** Any Amendment to this Agreement 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 Agreement, or their successors in office.
- 5.2 **Waiver.** If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 5.3 **Contract Complete.** This Agreement contains all negotiations and agreements between the State and the LGU. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6 Legacy Logo

Minn. Laws 2010, chapter 361, article 3, section 5, (b)) states: "A recipient of the funds from the outdoor heritage fund, parks and trails fund, clean water fund or arts and cultural heritage fund shall display, where practicable, a sign with the logo developed under this section on construction projects and at access points to any land or water resources acquired in fee or an interest in less than fee title, or that were restored, protected, or enhanced, and incorporate the logo, where practicable, into printed and other materials funded with money from one or more of the funds."

Clean Water Land and Legacy Amendment Logo Usage Guidelines:

http://www.legacy.leg.mn/sites/default/files/resources/Legacy_Logo_Guidelines.pdf

Download the Legacy Logo: <http://www.legacy.leg.mn/legacy-logo/legacy-logo-download>

7 Authorized Representatives

The State's Authorized Representative/Project Manager is **Gretchen Sabel**, or her successor, 520 Lafayette Road North, St. Paul, MN 55155, 651.757.2686, gretchen.sabel@state.mn.us, and has the responsibility to monitor the LGU's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, the State's Authorized Representative/Project Manager will certify acceptance on each invoice submitted for payment.

The LGU's Authorized Representative is <name>, or his<her> successor, <name>, <email address>, <telephone>. If the LGU's Authorized Representative changes at any time during this Agreement, the LGU must immediately notify the State.

8 Liability

Each party will be responsible for its own acts and behavior and the results thereof.

9 State Audits

Under Minn. Stat. § 16C.05, subd. 5, the LGU's books, records, documents, and accounting procedures and practices relevant to this Agreement 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 Agreement.

10 Government Data Practices

The LGU 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 Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the LGU under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the LGU or the State.

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

11 Publicity and Endorsement

11.1 **Publicity.** Any publicity regarding the subject matter of this Agreement 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 LGU individually or jointly with others, or any subcontractor's, with respect to the program, publications, or services provided resulting from this Agreement.

11.2 **Endorsement.** The LGU must not claim that the State endorses its products or services.

12 Governing Law, Jurisdiction, and Venue

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

13 Termination

13.1 **Termination.** The State or the LGU may terminate this Agreement at any time, with or without cause, upon 30 days written notice to the other party.

13.2 **Termination for Insufficient Funding.** The State may immediately terminate this agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or 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 LGU. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the LGU 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 Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the LGU notice of the lack of funding within a reasonable time of the State's receiving that notice.

14 E-Verify Certification (In accordance with Minn. Stat. §16C.075)

For services valued in excess of \$50,000, LGU certifies that as of the date of services performed on behalf of the State, LGU and all its subcontractors will have implemented or be in the process of implementing the federal E-

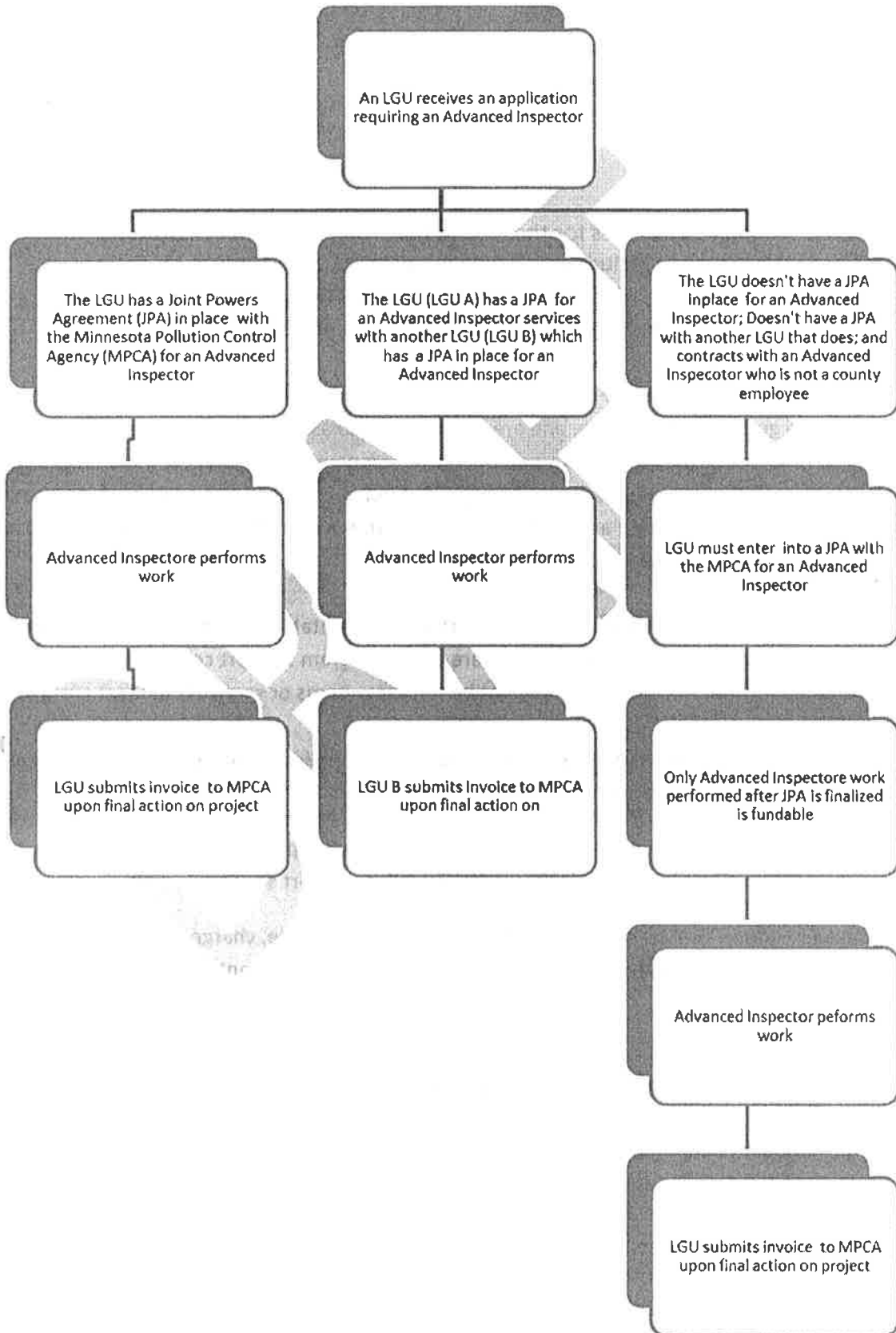
Verify program for all newly hired employees in the United States who will perform work on behalf of the State. LGU is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with LGU and made available to the State upon request.

[Signatures as required by the State]

DRAFT

Attachment A

Eligible Options for Local Governmental Unit (LGU)



Attachment B
Eligible & Ineligible Expenses and FTE Calculations

A. Eligible Expenses

Only eligible expenses will be reimbursed. Eligible expenses are costs directly incurred through work activities that are (a) solely related to and necessary for producing the work products and deliverables as described in the proposal and subsequent Workplan and (b) occur during the contract period. Expenses are eligible only if incurred on and after the effective date of the contract, or the date the contract was executed, whichever is later. Eligible expenses include, but are not limited to:

1. Personnel

Applicant must include hourly rates for those staff that will be providing assistance and management of the contract. Include in hourly rate all costs, including:

- Actual wages of grantee employees if specified and documented;
- Fringe benefit costs, including employee taxes and insurance costs
- Indirect:

Indirect costs are incurred for a common or joint purpose benefiting more than one cost center or program area in the grantee organization, and are also referred to as shared or central services costs. Indirect costs may be reflected in the budget as a percentage of compensation costs only if the basis of that allocation is demonstrated through submission of an approved federal indirect rate or through demonstration of the basis for that allocation rate and method used. Regardless of method, the applicant must indicate what items are included in the indirect cost amount.

Indirect costs based upon a usage allocation rate are acceptable. Administrative and program support costs that are not covered by an allocation rate are direct program support costs. Direct charges and items covered by the indirect allocation may not be the same items or services. Indirect costs may include:

- Office supplies (office materials and supplies, maintenance, office utility costs and other related expenses, reasonable office rental fees)
- A portion or percentage of personnel costs for employees providing support services to the organization such as general administrative support services.
- Administrative expenses that are either reimbursable, chargeable to the project or included as part of the workplan must not exceed 10% of overall grant amount.

2. Equipment

Equipment must be specific to accomplish Workplan duties and approved by the MPCA, including:

- Field materials and supplies
- Rental of audio visual equipment, as related to the project and approved in the Workplan;
- [Rental of boats/canoes, if applicable.]

3. Other

Other eligible expenses that must be itemized in the budget include:

- Shipping, postage, and related expenses

- Production and distribution of publications and periodicals relating to accomplishing Workplan activities, with an emphasis upon using electronic methods to accomplish tasks
- In-state transportation and travel expenses (such as lodging, meals and mileage) of personnel approved in the Workplan in the same manner and in no greater amount than provided for in the current "Commissioner's Plan" in force at the time of the expenditure and promulgated by the Commissioner of Minnesota Management & Budget (<http://www.mmd.admin.state.mn.us/commissionersplan.htm>).
- Training and materials (requires MPCA approval)
- Advertising costs related to the project and approved in the Workplan

B. Ineligible expenses

Expenses which are ineligible for reimbursement include, but are not limited to:

- Any expenses incurred before the contract is fully executed [unless specifically allowed] (including applicant's expense for preparing the Workplan/budget)
- Bad debts, late payment fees, finance charges or contingency funds, interest, and investment management fees
- Attorney fees
- Expenses for preparing proposals in response to this or other RFPs
- Employee worksite parking
- Excessive administrative expenses
- Lobbying, lobbyists and political contributions
- Mark-up on purchases and/or subcontracts
- Taxes, except sales tax on eligible goods and services
- Activities addressing permit fees
- Activities addressing enforcement actions that involve a financial penalty
- Memberships (including subscriptions and dues)
- Reimbursement to non-staff stakeholders for their attendance at stakeholder participation meetings
- Food (other than staff per diem)
- Entertainment, gifts, prizes and decorations
- Merit awards and bonuses
- Donations and fundraising
- Computer(s) and software, unless unique to the project and specifically approved by the MPCA
- Purchase or rental of mobile communication devices such as pagers, cell phones, and personal data assistants (PDAs)