

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET; THE
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES; THE
DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY;
THE CAPITAL DEVELOPMENT BOARD
AND THE ILLINOIS FINANCE AUTHORITY REGARDING THE
FINANCING OF CERTAIN ENERGY PERFORMANCE CONTRACT
PROJECTS**

This Intergovernmental Agreement (hereinafter referred to as the "Agreement") is entered into this 11th day of June 2012, by and through **THE GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET ("GOMB"); THE DEPARTMENT OF CENTRAL MANAGEMENT SERVICES ("CMS"); THE DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY ("DCEO"); THE CAPITAL DEVELOPMENT BOARD ("CDB") AND THE ILLINOIS FINANCE AUTHORITY ("IFA");** collectively referred to as "PARTIES" and may be individually referred to herein as a "PARTY".

WITNESSETH:

WHEREAS, Illinois law provides that public agencies may share powers through use of intergovernmental agreements pursuant to the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq. (1991)); and

WHEREAS, the State of Illinois is committed to furthering the development of the energy efficiency industry in Illinois in order to create jobs, increase the tax base, and improve Illinois' environmental quality; and it is in this interest that the State continues to lead by example and further improve the energy efficiency of its own buildings; and

WHEREAS, the State agreed to procure certain construction and maintenance-related services in connection with undertaking certain energy conservation projects to be financed through performance-based contracts at State-owned facilities identified by the Parties (the "Projects"); and

WHEREAS, GOMB administers the funding of the State's capital improvement programs and has statutory power (30 ILCS 330/1 et seq.) to authorize the release of capital funds, pursuant to the appropriation set forth in 30 ILCS 330/3e, to Fund 419 of the State Treasury, a non-appropriated account

administered by DCEO, for the purpose of funding certain services for one or more Projects; and

WHEREAS, CMS has the power to enter into contracts for equipment and services designed to decrease energy consumption in State-owned or controlled buildings and the power to develop and implement a system for evaluating energy consumption in facilities owned and operated under the authority of CMS (20 ILCS 405/405-295); and

WHEREAS, DCEO has the statutory power to receive, hold, administer, and disburse funds from Fund 419 for the purposes contemplated by this Agreement, subject to direction from GOMB and the Governor's Office. Further, DCEO has statutory power to provide advisory and technical assistance in connection with Energy Conservation Projects undertaken by agencies of the State of Illinois (20 ILCS 605/605-55, 605-323, 605-495; 220 ILCS 5/8-103); and

WHEREAS, CDB has the power to contract for and supervise the construction and repair of buildings under the control of or for the use of any State agency, as authorized by the General Assembly, utilizing the best available technologies for minimizing building energy costs (20 ILCS 3105/10.04); and

WHEREAS, IFA has the power to contract for and finance the costs of energy audits, project-specific engineering and design specifications, and any other related analyses preliminary to an energy conservation project; and, to contract for and finance the cost of project monitoring and data collection to verify post-installation energy consumption and energy-related operating costs (20 ILCS 3501/820-20); and

WHEREAS, the Parties desire to cooperate with and among each other in furtherance of the Projects for the legitimate public policy objectives described above;

NOW, THEREFORE, in consideration of the aforementioned recitals and the mutual covenants contained herein, the Parties hereto agree as follows:

A. Obligations of GOMB:

GOMB acknowledges and agrees it will:

1. No later than June 30, 2012, direct the release of \$10 million from Fund 141 of the State Treasury, as authorized by 30 ILCS 330(e) to Fund 419 of the State Treasury, a non-appropriated account administered by DCEO, for use in funding certain services for one or more Projects. DCEO shall not make any disbursement of the \$10 million from Fund 419 without, in each case, the prior written consent of the Director of GOMB (or his designee). In furtherance thereof, DCEO shall submit to GOMB a Project Release Form outlining all project information and specified outcomes for each proposed disbursement; and
2. Cooperate with all Parties in furtherance of the Projects in a commercially reasonable manner consistent with established GOMB policies and procedures.

B. Obligations of CMS:

CMS acknowledges and agrees it will:

1. Provide the administrative processing of procurement document development in coordination with IFA, CDB, DCEO, GOMB and the user agencies of the selected Projects financed through performance-based contracts at State-owned facilities as identified by the Parties;
2. Acquire and provide energy and utility usage data as needed to establish the baseline operating statistics against which energy and utility usage reduction guarantees will be measured;
3. Participate, along with the other Parties, in identifying appropriate energy conservation measures to meet the operational needs of such Parties and the energy efficiency goals of the Projects;
4. Coordinate with GOMB to establish a financial structure to support the construction and post-construction services required to achieve and preserve the energy and utility savings guarantees established for selected Projects;
5. Maintain and monitor the utility and energy usage data associated with the selected facilities/complexes to quantify performance relative to the guaranteed usage reductions;
6. Oversee the interaction between the selected Energy Services Corporation (“ESC”) and the management and operations personnel responsible for the selected facilities/complexes to ensure that all parties adhere to the maintenance and operational schedules and protocols required of in-house staff and any ESC-contracted providers relative to achieving and preserving the savings guarantees;

7. Coordinate communication between any Party and the respective ESC relative to any changes in operational schedule, demand or performance level requirements which might represent a material change from the conditions in place at the time documented by the energy usage baseline, including, but not limited to, coordinating with DCEO and its consultants during the contract development process to establish appropriate protocols for making adjustments to the savings guarantee administration process to incorporate changes in operational demands not foreseeable at the time of award; and
8. Cooperate with all Parties in furtherance of the Projects in a commercially reasonable manner consistent with established CMS policies and procedures.

C. Obligations of DCEO:

DCEO acknowledges and agrees it will:

1. Provide advisory services by a designated employee of, or consultant to, DCEO throughout the work done on each Project wherever necessary; and such designee will evaluate and make recommendations regarding the proposals from the respective ESC, the technical merit of the selected ESC's investment-grade audit, and the structure and language of the CMS/ESC contract, including any guarantee;
2. Award energy efficiency rebates (from the Energy Efficiency Portfolio Standard "Illinois Energy Now" program) to CMS in order to qualify energy efficiency upgrades performed with respect to each Project;
3. Disburse up to \$10 million in funds from Fund 419 of the State Treasury for use in funding certain services for one or more selected Projects, subject, in each case, to obtaining the prior written consent of the Director of GOMB pursuant to Section A(1) above; and
4. Cooperate with all Parties in furtherance of the Projects in a commercially reasonable manner consistent with established DCEO policies and procedures.

D. Obligations of CDB:

CDB acknowledges and agrees it will:

1. Review proposal costs, design documents, and construction estimates for each Project;

2. Participate in the selection process of the ESC for each Project;
3. Act in the role of project manager for each Project, including, but not limited to, the duties to schedule review, quality assurance, pay/progress actions, sub-contractor/suppliers payments, lien waiver concerns, etc.;
4. Review all change orders for each Project;
5. Retain all Project as-built drawings and specifications for this Project; and
6. Cooperate with all Parties in furtherance of the Projects in a commercially reasonable manner consistent with established CDB policies and procedures.

E. Obligations of IFA:

IFA acknowledges and agrees it will:

1. Work with other Parties to facilitate the financing of selected Projects;
2. Make available to other Parties its existing executed contracts with ESCs, including making any amendments to such contracts as may be agreed upon with all parties thereto and as necessary to implement the program (IFA recognizes that each of the other Parties may issue its own RFQ/technical specifications to the ESCs and sign a separate contract with the respective ESC for a specific Project);
3. If necessary to implement any Projects undertaken pursuant to this Agreement, issue bonds to finance Projects, however, IFA will not undertake responsibility for issuing, reviewing, receiving or evaluating bids from any ESC nor approving the scope of work in connection with any Project, nor will IFA make any warranties as to the suitability of any Project or the sufficiency of monies necessary to complete any Project; and
4. Cooperate with all Parties in furtherance of the Projects in a commercially reasonable manner consistent with established IFA policies and procedures.

GENERAL PROVISIONS

- A. The term of this Agreement commences on the date of execution and delivery by all Parties hereto and terminates on October 31, 2021.

- B. It is understood and agreed that this Agreement constitutes the complete and exclusive statement of the agreement of the Parties relative to the subject matter hereof and supersedes all previous oral and written proposals, negotiations, representations, or understandings concerning such subject matter.
- C. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.
- D. This Agreement may only be modified by written modification executed by duly authorized representatives of all the Parties hereto.
- E. The failure by any Party to seek redress for violation of or to insist upon the strict performance of any condition or covenant of this Agreement shall not constitute a waiver of any such breach or subsequent breach of such covenants, terms, conditions, rights and remedies. No provision of this Agreement shall be deemed waived by the Parties unless such provision is waived in writing.
- F. It is agreed that this Agreement will be governed by the laws of the State of Illinois, without regard to any conflict of laws provisions.
- G. All notices shall be in writing and may be delivered through electronic communication, personally delivered or mailed to the following persons at the following addresses:

To GOMB: Jerome Stermer, Acting Director, or successor;
Jerome.Stermer@illinois.gov

Sheila Saegh Henretta, General Counsel, or successor;
Sheila.Henretta@illinois.gov

Office of Management and Budget
Stratton Office Building
401 South Spring Street
Room 603
Springfield, Illinois 62706

To CMS: Nadine Lacombe, General Counsel, or successor;
Nadine.Lacombe@illinois.gov

Illinois Department of Central Management Services
Stratton Office Building
401 South Spring Street
Room 720
Springfield, Illinois 62706

To DCEO: Anita Patel, Chief Financial Officer, or successor;
Anita.D.Patel@illinois.gov

Illinois Department of Commerce and Economic
Opportunity
500 East Monroe
Springfield, Illinois 62701-1643

To CDB: Jim Underwood, Executive Director, or successor;
Jim.Underwood@illinois.gov

Illinois Capital Development Board
Stratton Office Building
401 South Spring Street
Suite 300
Springfield, Illinois 62706

To IFA: Christopher Meister, Executive Director, or successor;
cmeister@il-fa.com

Pamela Lenane, Acting General Counsel, or successor;
plenane@il-fa.com

Illinois Finance Authority
Two Prudential Plaza
180 North Stetson, Suite 2555
Chicago, Illinois 60601

- H. The introductory recitals included at the beginning of this Agreement are agreed to and incorporated into this Agreement.
- I. The Parties agree to maintain books and records related to the performance of this Agreement and necessary to support amounts charged to any Party under this Agreement for a minimum of three (3) years from the last action on the Agreement. The Parties further agree to cooperate fully with any audit and to make its books and records, and books and records within its custody or control available to the Illinois Attorney General, the Illinois Auditor General, or any other governmental agency or agent thereof that is authorized to audit or inspect such books and records.

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of June, 11, 2012.

ILLINOIS FINANCE AUTHORITY


By: _____



Its: _____

Executive Director —

**GOVERNOR'S OFFICE OF
MANAGEMENT AND BUDGET**

By: 

Its: Director

Date: 5/21/12

**DEPARTMENT OF CENTRAL
MANAGEMENT SERVICES**

By: 

Its: Director

Date: 6/11/12

DEPARTMENT OF COMMERCE
AND ECONOMIC OPPORTUNITY

By: 

Its: Acting Director

Date: 5-21-2012

**CAPITAL DEVELOPMENT
BOARD**

By: 

Its: JIM UNDERWOOD, EXECUTIVE DIRECTOR

Date: 6 8 2012