**INTERGOVERNMENTAL AGREEMENT**

**BY AND BETWEEN**

**THE GEORGIA ENVIRONMENTAL FINANCE AUTHORITY**

**AND**

**AGENCY**

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter “Agreement”), dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (the date to be inserted by the last party to execute) by and between the Georgia Environmental Finance Authority (hereinafter “GEFA”) and the Agency (hereinafter “Agency”) (GEFA and Agency collectively referred to as the “Parties”).

WHEREAS, in 2010, the Georgia Constitution was amended to authorize the State of Georgia to finance multiyear contracts for governmental energy efficiency or conservation improvement projects in which an Energy Savings Provider (“ESP”) guarantees specified savings or revenue gains attributable solely to the improvements; and

WHEREAS, the General Assembly implemented the authorization in the Georgia Constitution by passing the Guaranteed Energy Savings Performance Contracting Act (“Act”), O.C.G.A. § 50-37-1-8 *et seq*.; and

WHEREAS, pursuant to the Act, state agencies may enter into Guaranteed Energy Savings Performance Contracts (“GESPCs”) with qualified ESPs in accordance with the procurement procedures in the Act; and

WHEREAS, the Agency anticipates that it will enter into GESPCs with qualified ESPs and will require technical assistance from GEFA, including, but not limited to, obtaining contract value approval authority from the Georgia State Financing and Investment Commission (“GSFIC”), administering the prequalification process of ESPs and approving the GESPC;

WHEREAS, a Resolution of the Georgia State Financing and Investment Commission (“GSFIC”) effective December 12, 2012, has assigned Georgia Environmental Finance Authority (“GEFA”) as the lead agency for establishment of the State government program, which includes submitting a request to the Commission for the establishment of the Total Contract Value and Annual Reporting Requirements

WHEREAS, pursuant to the Act, GEFA is required to provide technical assistance to state agencies contracting for energy conservation measures and to promote and facilitate GESPCs by state agencies; and

WHEREAS, pursuant to 1983 Ga. Const., Art. 9, Sec. 3, Para. 1, the parties hereto may contract for any period not exceeding fifty (50) years with each other for the provision of services, or for the joint or separate use of facilities or equipment.

NOW, THEREFORE**,** in consideration of the mutual promises and mutual public benefits, flowing each to the other, GEFA and Agency each agree as follows:

**ARTICLE 1**

**Scope of Services**

1.1. Rules. GEFA shall publish and provide the Agency with a copy of any rules, regulations, stipulations, and policies necessary to carry out the terms and provisions of the Act.

1.2 Model Documents. GEFA shall develop and provide the Agency with model documents and contracts to be executed by and between the Agency, ESP, and third – party lender, where applicable, for each GESPC.

1.3 Fiscal and Reporting Requirements. Agency is required to provide the following information to GEFA. GEFA uses the information to assist the agencies and receive necessary program approvals.

1.3.1 A summary of expected or anticipated GESPCs. The information will include the proposed building address, term, annual finance amount, total contract value, and estimated savings.

1.3.2 An Annual Report due by September 1 encompassing the prior fiscal year. The information will include EPC Project Name and Number, building address (or addresses) of the EPC, EPC term, interest rate on associated financing, annual EPC payments over the term of the contract, total contract value for each multiyear obligation executed in the prior fiscal year, and realized energy savings.

1.3.3 The Agency acknowledges and agrees, by signing this Agreement, that the Agency will comply with all statutory requirements related to the GESPCs, the Agency is responsible for GESPC payments and acknowledges and agrees that all GESPCs are considered by the rating agencies as long-term obligations of the State of Georgia and as such are non-cancellable without the express consent of both GEFA and GSFIC.

1.3.4 The Agency acknowledges and agrees that the Agency is responsible for compliance with all IRS regulations related to any GESPC to which the Agency is a party including, but not limited to, limitations upon “private use” and adoption of post issuance compliance procedures applicable to any tax exempt financing.

1.4 Technical Assistance. GEFA will provide the following assistance to the Agency, upon request by the Agency:

1.4.1 GEFA will brief Agency personnel and administrators on GESPCs.

1.4.2 GEFA will advise the Agency in the collection of technical facility data.

1.4.3 GEFA will participate in GESPC project meetings with the Agency and ESP at GEFA’s discretion.

1.4.4 GEFA will serve as an advisor to the Agency’s Request for Proposal (“RFP”), as an advisor to the evaluation committee and participate, as an advisor, in interviews with ESPs responding to the RFP, all at GEFA’s discretion.

1.4.5 GEFA will assist in the review of Investment Grade Energy Audit (“IGA”) reports, including facility baselines and savings measurement and verification plans.

1.4.6 GEFA will provide assistance to the Agency in monitoring the GESPC, including a review of Annual Savings Reconciliation Reports.

1.4.7 GEFA will review ECMs and advise Agency on compliance of ECMs with applicable statute.

1.5 List of ESPs. GEFA will establish and maintain the list of prequalified ESPs from which the Agency must select one or more to serve as the ESP for the designated GESPC(s).

**ARTICLE 2**

**Term**

The term of this Agreement shall commence on the date first above written (hereinafter “Commencement Date”) and shall expire at 11:59 p.m., prevailing legal time in Atlanta, Georgia, on the 31 day of October, 2035 (hereinafter “Term”), unless earlier terminated as specified herein.

**ARTICLE 3**

**Obligations of the Agency**

3.1 Request for Proposals.

3.1.1 The Agency will notify GEFA, in writing, of its intent to issue an RFP to ESPs.

3.1.2 The Agency shall issue an RFP to at least three prequalified ESPs.

3.1.3 Before the time for submitting Preliminary Technical Proposals (“Proposals”) in response to the RFP, the Agency will permit the respondents to visit and inspect the premises (“Premises”) where proposed energy conservation measures (“ECMs”) will be performed.

3.1.4 The Agency will arrange and require ESPs to attend a mandatory pre-bid meeting.

3.1.5 The Agency will establish a technical project evaluation committee to evaluate Proposals from ESPs and assist in selecting an ESP to perform the services outlined in the RFP.

3.1.6 The Agency will include the model documents and contracts as referenced in Article 1.2 above in the RFP and include provisions in the RFP which prohibit any changes to the model documents and contracts. The Agency will include language in the RFP which states any ESP submitting a Proposal expressly agrees to the model documents and contracts without any changes or modifications except those specific terms and conditions which require information, including but not limited to, dates, contract amounts, percentages, durations, schedules, etc.

3.2 Investment Grade Energy Audit (IGA).

3.2.1 Once an ESP is selected, the Agency shall enter into an IGA Agreement with the ESP, whereby the ESP will conduct an audit of the Premises and produce an IGA Report.

3.2.2 The Agency will cooperate with and provide the selected ESP with technical facility and utility data as needed for the ESP to perform the IGA.

3.2.3 The Agency is responsible for obtaining budget approval in the event the Agency is required to pay for the IGA pursuant to 3.2.4.

3.2.4 In the event that the Agency decides not to enter into a GESPC with the selected ESP, and the ESP has complied with all terms and conditions of the IGA Agreement, the Agency is responsible for paying the IGA fee.

3.2.5 In the event that the Agency does enter into a GESPC with the ESP, the Agency may cause the cost of the IGA to be included in the GESPC fee.

* + 1. The Agency will submit the IGA Report to the Agency’s Comptroller for review and approval for fiscal responsibility.
    2. The Agency will submit the IGA Report to the Office of Planning and Budget.
    3. The Agency will provide a copy of IGA Report to GEFA who will review and supply copies to GSFIC.
  1. Energy Performance Contracts.

3.3.1 The Agency is the Party that enters into a GESPC with the selected ESP to perform the selected ECMs.

3.3.2 The Agency may use all legally available funds to satisfy multi-year obligations to any GESPC.

3.3.3 The Agency is required to pay other expenses associated with the GESPC, including Agency contingencies, measurement and verification (“M&V”), maintenance, training, and any other expenses, unless such costs are included as part of the GESPC fee.

* + 1. The Agency shall contract with the ESP to provide ongoing maintenance, monitoring, repairs, and adjustments to the ECMs.
    2. The Agency shall provide the final GESPC between the Agency and ESP for review and approval by GEFA.
    3. GEFA shall ensure compliance state-wide with the multi-year contract value set by GSFIC. The Agency acknowledges and understands that any multi-year GESPC that is not in compliance with the multi-year contract value authority set by GSFIC shall be void and of no effect.
    4. The Agency will submit all capital lease and other financial data to GEFA in support of their request to GSFIC for contract value authority.
    5. Any GESPC containing provisions for improvements not causally related to ECMs shall not exceed 15% of total value of the contract. The Agency shall submit to GEFA any GESPC containing the aforementioned provisions for GEFA’s approval.
    6. The Agency shall submit to GEFA for GEFA’s approval, any GESPC containing provisions for improvements not causally related to facility alterations required to properly implement ECMs.
    7. The Agency will designate a representative or project manager with authority to act on behalf of the Agency for the project and to act as a liaison with other agencies, utility providers, and the selected ESP.
    8. The Agency will provide written notice to its utility providers describing the energy conservation measures to be installed. If the GESPC requires the ESP to provide such notice, the Agency shall verify that such notice is provided.
    9. Because energy savings cannot be directly measured, energy savings are necessarily the difference between baseline (pre-construction) energy use and post-construction energy use, adjusted by other factors set forth in the GESPC documents. In addition, the guaranteed savings from a GESPC will fundamentally be in terms of energy units that are then translated into dollars using contractually agreed upon utility rates.
    10. The Agency will review the future planned use of the buildings under consideration for GESPC with the State Properties Commission and the Office of Planning and Budget to determine that the building will be in use long enough to justify the GESPC at a minimum and for the term of any installment purchase contract in conjunction therewith.

**ARTICLE 4**

**Notice**

Notice. Notices, requests, demands and other communications provided hereunder shall be in writing and sent by facsimile transmission to the facsimile number indicated below (which shall be followed by an immediate telephone call to confirm delivery); mailed by first class United States certified mail, return receipt requested; delivered by overnight carrier (such as, but not limited to, UPS, Federal Express or DHL); or personally delivered to the applicable party at the addresses indicated.

If to GEFA:

Kristofor Anderson

Energy Assurance Program Manager

Georgia Environmental Finance Authority

233 Peachtree Street, NE

Harris Tower, Suite 900

Atlanta, GA 30303

Phone: (404) 584-1031

Fax: (404) 584-1069

If to the Agency:

All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; and those given by facsimile shall be deemed given on the date of facsimile transmittal. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address or facsimile number of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the date of facsimile transmittal, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

**ARTICLE 5**

**Miscellaneous**

5.1 Severability. If a part of this Agreement is declared invalid, the parties intend to preserve the

remainder if the remaining terms provide each party the substantial benefit of its bargain.

5.2 Third Party Beneficiaries. Nothing in this Agreement, whether express or implied, is

intended to confer upon any other party any right or interest whatsoever, except the parties hereto, their respective successors and assigns. No party other than the parties hereto is entitled to rely in any way upon the warranties, representations, obligations, indemnities or limitations of liability whatsoever in this Agreement.

5.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and, except as otherwise stated, supersedes all prior understandings and writings, and may be changed only by a writing signed by the parties hereto.

**IN WITNESS WHEREOF,** this Agreement is entered into on the date of execution by both parties.

**GEORGIA ENVIRONMENTAL FINANCE AUTHORITY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Kevin Clark Date

Executive Director

**AGENCY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date