

**STATE OF MINNESOTA
GRANT AGREEMENT
PTF13-003**

This grant agreement is between the State of Minnesota, acting through its Commissioner of Natural Resources (STATE) and the City of Duluth, 1532 W Michigan Street, Duluth, MN 55806 (GRANTEE).

Recitals

1. Under Minn. Laws 2013, Chapter 137, Article 3, Section 3, Subd. C (10), the State has allocated funds to provide grants for parks and trails of regional or statewide significance outside of the metropolitan area.
2. The Grantee has made application to the State for a portion of the allocation for the purpose of conducting the project entitled **Chambers Grove Park** in the manner described in the Grantee's APPLICATION which is incorporated into this Agreement by reference.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant agreement to the satisfaction of the State.

Grant Agreement

1 Term of Grant Agreement

1.1 **Effective date:** December 19, 2013 or the date the State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2, whichever is later.

The Grantee must not begin work under this grant agreement until this agreement is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.

1.2 **Expiration date:** June 30, 2017, 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 agreement: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Signage, Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; 15 Data Disclosure, 18 Inspections, 19 Resource Management and Protection and 21. Program Requirements.

2 Grantee's Duties

The Grantee, who is not a state employee, will:

See Attachment A – PROJECT BUDGET, which is incorporated by reference and made a part of this agreement. Where provisions of the Grantee's APPLICATION are inconsistent with other provisions of the Agreement, the provisions of this Agreement shall take precedence over the provisions of the APPLICATION.

The Grantee agrees to complete the project in accordance with the approved budget to the extent practicable and within the project period specified in the grant agreement. Any material change in the scope of the project, budget or completion date shall require prior written approval by the STATE.

3 Time

The Grantee must comply with all the time requirements described in this grant agreement. In the performance of this grant agreement, 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 agreement as follows:

- a. **Compensation:** The Grantee will be paid for all services performed pursuant to this grant agreement not to exceed <\$1,000,000>. Of this amount, \$500,000 is available beginning on the Effective Date of this

agreement (see 1.1 above) and ending on June 30, 2016 to reimburse expenses incurred during this time period. The remaining \$500,000 will become available beginning on July 1, 2014 and ending on June 30, 2017 to reimburse expense incurred between the Effective Date of this agreement and June 30, 2017.

b. *Matching Requirement:* <None>.

The total state obligation for all compensation to grantee shall not exceed: <One million dollars>>.

Funds made available pursuant to this Agreement shall be used only for expenses incurred in performing and accomplishing the purposes and activities specified herein. Notwithstanding all other provisions of this Agreement, it is understood that any reduction or termination of funds allocated to the State may result in a like reduction to the Grantee.

4.2. *Payment*

The State shall disburse funds to the Grantee pursuant to this Agreement on a reimbursement basis, based upon a payment request and required expenditure documentation submitted by the Grantee and reviewed and approved by the State. The Grantee shall be limited to no more than six payment requests during the period covered by this Agreement. The Grantee shall submit a final billing within 30 days of the end of the project period.

5 **Conditions of Payment**

All services provided by the Grantee under this grant agreement 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 [Joe Hiller, 500 Lafayette Road, St. Paul, MN 55155-4039, 651-259-5538], or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant agreement. 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 [Tari Rayala, City Architect, 1532 W Michigan Street, Duluth, MN 55806, (218) 730-4434]. If the Grantee's Authorized Representative changes at any time during this grant Agreement, the Grantee must immediately notify the State.

7 **Assignment, Amendments, Waiver, and Grant agreement Complete**

7.1 *Assignment.* The Grantee may neither assign nor transfer any rights or obligations under this grant agreement 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 agreement, or their successors in office.

7.2 *Amendments.* Any amendment to this grant 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 grant agreement, or their successors in office.

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

7.4 *Grant Agreement Complete.* This grant agreement contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant agreement, whether written or oral, may be used to bind either party.

8 **Liability**

Each party will be responsible for its own acts and behavior and the results thereof. The liability of each party is set out in chapter 3.736 of the Minnesota Statutes and is subject to the limitations thereof. Nothing herein shall be construed to limit either party from asserting against third parties any defenses or immunities (including common law, statutory and constitutional) it may have or be construed to create a basis for a claim or suit when none

would otherwise exist. This provision shall survive the termination of this Agreement.

9 State Audits

Under Minn. Stat. §16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction 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 agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later

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 agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant agreement. 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. The Grantee's response to the request shall comply with applicable law.

10.2. **Intellectual Property Rights (if applicable)**

a. **Intellectual Property Rights.** The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this agreement*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this agreement. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or subcontractors, in the performance of this agreement. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee upon completion or cancellation of this agreement. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

b. **Obligations**

1. **Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Grantee, including its employees and subcontractors, in the performance of this agreement, the Grantee will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

2. **Representation.** The Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Grantee nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the

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 Works or Documents infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Grantee's or the State's opinion is likely to arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of 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 Signage, Publicity and Endorsement

12.1 **Signage** Any site developed or improved by this grant agreement shall display a sign at a prominent location at the entrance to the site and in a form approved by the State that acknowledges funding through this grant

12.2 **Publicity**. Any publicity regarding the subject matter of this grant agreement 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 agreement.

12.3 **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 agreement. Venue for all legal proceedings out of this grant agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

The State may immediately terminate this grant agreement 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.

15 Data Disclosure

Under Minn. Stat. § 270C.65, Subd. 3, 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 Americans with Disabilities Act

The Grantee shall construct, operate, and maintain all facilities and programs in compliance with all state and federal accessibility laws, regulations, and guidelines. Information on compliance with the Americans with Disabilities Act is available at <http://www.access-board.gov>.

17 Reporting Requirements

The Grantee shall submit a progress report, in a form prescribed by the State, by January 1 of each year during the term of this grant agreement. A final report must be submitted with the request for final reimbursement. Forms will be provided by the state.

18 Inspections

The State's authorized representatives shall be allowed at any time to conduct periodic site visits and inspections to ensure work progress in accordance with this grant agreement, including a final inspection upon project completion.

Following closure of the project, the State's authorized representatives shall be allowed to conduct post-completion inspections of the site to ensure that the site is being properly operated and maintained and that no conversion of use has occurred.

19 Resource Management and Protection

The Grantee shall protect, manage and maintain, or cause to maintain, the property acquired and/or developed pursuant to this grant agreement. Properties shall be kept reasonably safe for public use, if applicable. All state and federal accessibility laws, regulations and standards shall be adhered to. Vegetation management and similar safeguards and supervision shall be provided to the extent feasible. Buildings, roads, trails and other structures and improvements, if any, shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration. Failure to adequately manage, maintain and properly protect the resources and property assisted through this grant agreement may result in the withholding by the State of any current or future payments to the Grantee related to this or any other Local Grants projects and may result in ineligibility of the Grantee to receive future Local Grants Program Grants.

The Grantee shall keep the facility open to the general public at reasonable hours and at times of the year consistent with the purpose and type of use of the property and appropriate management and protection of natural resources.

20 Invasive Species Prevention

The DNR requires active steps to prevent or limit the introduction, establishment, and spread of invasive species during contracted work. The contractor shall prevent invasive species from entering into or spreading within a project site by cleaning equipment prior to arriving at the project site.

If the equipment, vehicles, gear, or clothing arrives at the project site with soil, aggregate material, mulch, vegetation (including seeds) or animals, it shall be cleaned by contractor furnished tool or equipment (brush/broom, compressed air or pressure washer) at the staging area. The contractor shall dispose of material cleaned from equipment and clothing at a location determined by the DNR Contract Administrator. If the material cannot be disposed of onsite, secure material prior to transport (sealed container, covered truck, or wrap with tarp) and legally dispose of offsite.

The Grantee and/or contractor shall ensure that all equipment and clothing used for work in infested waters has been adequately decontaminated for invasive species (ex. zebra mussels) prior to being used in non-infested waters. All equipment and clothing including but not limited to waders, tracked vehicles, barges, boats, turbidity curtain, sheet pile, and pumps that comes in contact with any infested waters must be thoroughly decontaminated.

21 Grant Program Requirements

The grantee must comply with Attachment B – Grant Program Requirements.

1. STATE ENCUMBRANCE VERIFICATION

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

Signed: Kauna Ochs

Date: Dec. 24, 2013

Grant agreement No. 72881 PO#50803

2. GRANTEE

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

By: [Signature]

Title: Mayor

Date: 1-13-14

By: [Signature]

Title: City Clerk

Date: 1/14/14

As to form:

[Signature]

[Signature]

CITY AUDITOR

3. STATE AGENCY

By: [Signature]
(with delegated authority)

Title: Deputy Director, Parks & Trails

Date: 2-03-14

Distribution:
Agency
Grantee
State's Authorized Representative

**Attachment A
Project Budget**

Recipient: City of Duluth

Grant: PTF13-003 Chambers Grove Park

Grant Amount: \$1,000,000

Local Match:

Total Cost: \$1,000,000

Project Scope:

Restoration of parks and trails in the Duluth area impacted by the flood of 2012.

Notes / Conditions:

The Minnesota Historical Society (MHS) will be contacted to review your project to determine if the site is a potential location for historical or archeological resources. If the Historical Society determines that a survey is recommended, the recipient must complete the survey and consult with the Historical Society to ensure the project will have no adverse affect on the resources before any site disturbance.

<u>Project Components</u>	<u>Estimated Total Cost</u>
Replace Restroom Building	\$300,000
Roads and Parking	\$175,000
Playground	\$75,000
Landscaping, signs, pathways, racks	\$358,000
Design	\$92,000
<hr/>	
Total Cost	\$1,000,000

Attachment B
Grant Requirements

Land Retention Requirements:

1. **CONVERSION OF USE:** It is the intention of the State that the area funded by this agreement shall exist in the Grantee's ownership and be perpetually maintained and managed to protect its natural, scenic and/or recreational resources. The area funded by this Agreement [hereinafter "Funded Area"] is depicted in Attachment C – Project Boundary which is attached and made part of this agreement. The Grantee shall not at any time convert any of the Funded Area to uses other than the permitted uses specified in this agreement without the prior written approval of the State.

The State will consider a conversion request only after the following pre-requisites have been met:

- a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis;
- b. The Grantee has agreed to replace the converted lands with other lands of at least equal fair market value and reasonably equivalent natural and or scenic resources as determined by the State.

The State shall have the authority to approve or disapprove conversion requests.

2. **DEED RESTRICTION REQUIREMENT:** The Grantee shall have the following condition or a similar condition pre-approved by the state, recorded with the deed(s) to all of the Funded Area and submit an attested copy of the deed(s) and the condition to the State:

In order to comply with the Department of Natural Resources Grant Agreement PTF-003, the City of Duluth does hereby impose the following restrictions on the property: The property shall be managed and maintained consistent with the purpose and type of property acquired and/or developed using appropriate management and protection practices to protect the natural, scenic and/or recreational resources. The Grantee shall not at any time convert any portion of the area to uses other than permitted in this Agreement without the prior written approval of the State.

Sign Requirement: A recipient of money from the parks and trails fund must display a sign on lands and capital improvements purchased, restored, or protected with money from the parks and trails fund that includes the logo developed by the commissioner of natural resources to identify it as a project funded with money from the vote of the people of Minnesota on November 4, 2008.

Native Restoration: To the extent possible, a person conducting restoration with money appropriated in this section must plant vegetation or sow seed only of ecotypes native to Minnesota, and preferably of the local ecotype, using a high diversity of species originating from as close to the restoration site as possible, and protect existing native prairies from genetic contamination.

Minnesota Historical Sites Act and Minnesota Field Archaeology Act review: The Minnesota Historical Society will be contacted to review your project to determine if the site is a potential location for historical or archeological findings. If the Historical Society determines that a survey is required, the survey would need to be completed prior to any site disturbance for development projects and prior to the final reimbursement of the grant funds for acquisition projects.

Conservation Corps: The Grantee must give consideration to Conservation Corps Minnesota for possible use of the corps' services to contract for restoration and enhancement services. For projects with the potential to need historic preservation services, the Grantee must give consideration to the Northern Bedrock Conservation Corps for possible use of the corps' services.

Solar Photovoltaic Modules: No solar photovoltaic module may be installed unless the solar photovoltaic module is made in Minnesota as defined in Minnesota Statutes, section 216C.411, paragraph (a).

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 13-0508

ADOPTED: OCTOBER 14, 2013

RESOLVED, that city act as legal sponsor for the project contained in the park legacy application to be submitted on or before October 25, 2013, and that the city's chief administrative officer is hereby authorized to apply to the Minnesota department of natural resources (MnDNR) for funding of this project on behalf of city.

FURTHER RESOLVED, that city has the legal authority to apply for financial assistance and financial capability to ensure adequate construction, operation, maintenance, and replacement of the proposed project for its design life.

FURTHER RESOLVED, that city has not incurred any development costs or entered into a written purchase agreement to acquire the property in connection with the project.

FURTHER RESOLVED, that if the aforesaid grant is offered, the proper city officials are authorized to enter into a grant agreement with the MnDNR agreeing to the project with grant funds to be deposited in Fund 225-125-1808-4220-06 (disaster recovery fund, finance department, disaster aid and revenue, state of Minnesota legacy funds). This grant is one of ten legislatively designated appropriations for the purpose of restoration of parks and trails in the Duluth area impacted by the flood of 2012 and requires no in-kind (match) contribution by the city.

Resolution 13-0508 was unanimously adopted.

Approved October 14, 2013

DON NESS, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 14th day of October, 2013, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 14th day of January, 2014.

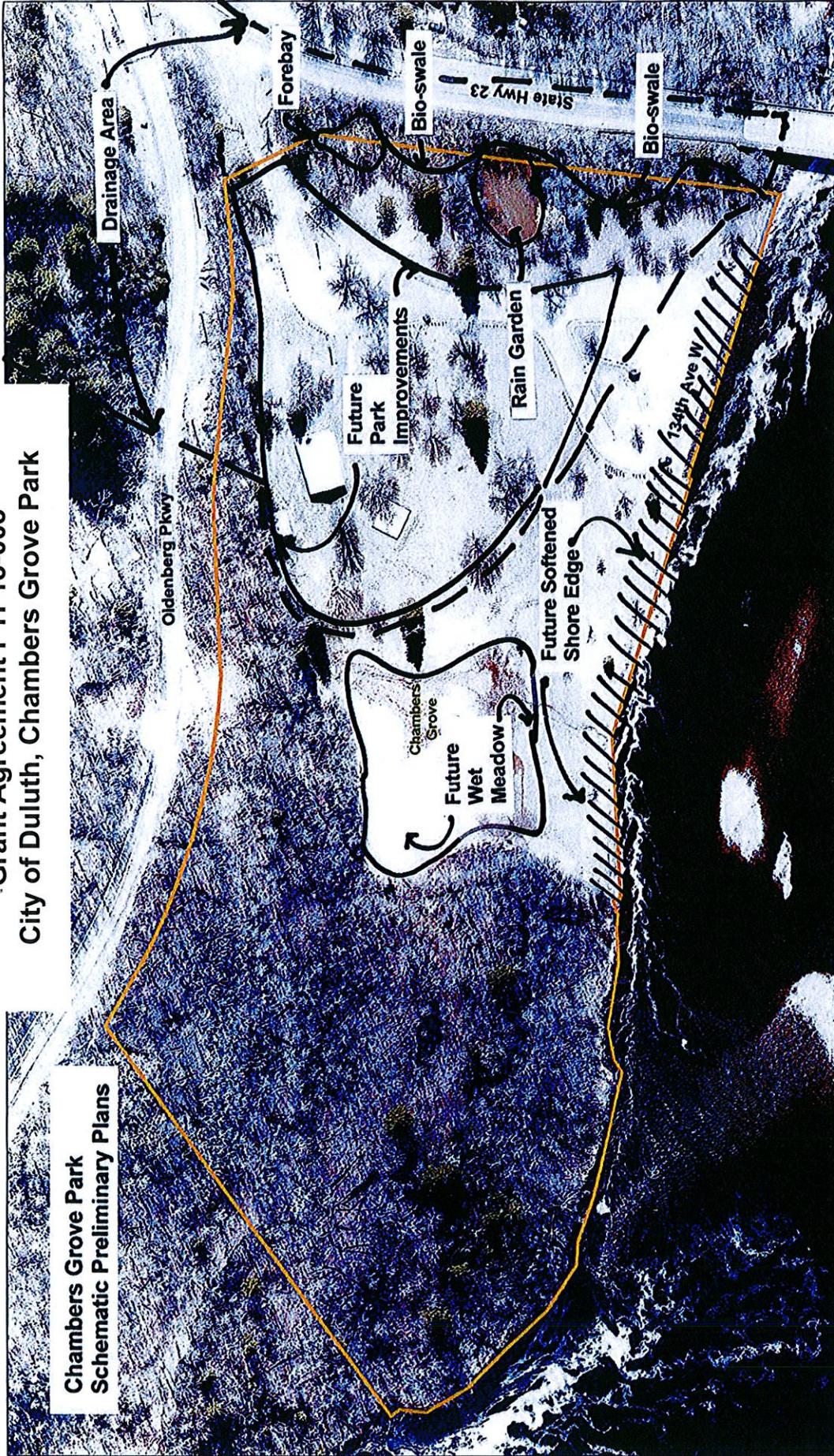
JEFFREY J. COX
City Clerk

by Denise Boudreau
Assistant
CITY OF DULUTH, MINNESOTA

22097

**Attachment C - Project Boundary
Grant Agreement PTF13-003
City of Duluth, Chambers Grove Park**

**Chambers Grove Park
Schematic Preliminary Plans**



**City of Duluth
Site Map**

Scale: 1 inch = 100 feet
 0 50 100 Feet
 0 50 100 Feet

1:1,200
 Prepared by: [unclear]
 Date: [unclear]

City of Duluth

Project Limits
 - Site Map
 - [unclear]

The City of Duluth has used the information provided in this map for informational purposes only. The City of Duluth does not warrant the accuracy or completeness of the information provided. The City of Duluth is not responsible for any errors or omissions in this map. The City of Duluth is not responsible for any damages or liabilities arising from the use of this map. The City of Duluth is not responsible for any changes in the information provided in this map. The City of Duluth is not responsible for any updates or revisions to this map. The City of Duluth is not responsible for any legal actions or claims arising from the use of this map. The City of Duluth is not responsible for any other matters related to this map.