

**STATE OF MINNESOTA GRANT CONTRACT  
WITH THE CITY OF DULUTH FOR DEBRIS AND SEDIMENT REMOVAL**

This grant contract is between the State of Minnesota, acting through its Commissioner of Natural Resources, ("State") and the City of Duluth, 402 City Hall, Duluth, Minnesota 55802 ("Grantee").

**Recitals**

1. Under Minn. Stat. Section 84.026, Subdivision 2, the State is empowered to enter into this grant.
2. The State agrees that removal of flood-deposited debris and sediment from Public Waters is in the interest of the State.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State. Pursuant to Minnesota Statutes §16B.98 Subdivision 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

**Grant Contract**

**1 Term of Grant Contract**

- 1.1 **Effective date:** April 1, 2013, or the date the State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** December 31, 2014 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 contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

**2 Grantee's Duties**

The Grantee, who is not a state employee, will be responsible for: Removal of debris and sediment deposited in Public Waters within the City of Duluth as a result of flooding associated with federal disaster DR-4069. Locations of work include high priority reaches of Kingsbury, Chester, Miller, Stewart, Sargent, and Merritt Creeks, as identified in Grantee's supplemental information received by the State March 1, 2013. Disposal of debris and sediment shall be in conformance with all local, state, and federal requirements. Work eligible for federal reimbursement is not eligible for payment by the State.

**3 Time**

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

**4 Consideration and Payment**

4.1 **Consideration.** The State will reimburse for all services performed by the Grantee under this grant contract as follows:

- (a) **Compensation.** The Grantee will be reimbursed 100% for eligible project expenses, not to exceed \$650,000.00. Eligible expenses are those incurred by Grantee on or after July 1, 2012 and directly related to removal of debris and sediment deposited in Public Waters as a result of June, 2012 flooding.
- (b) **Travel Expenses.** Reimbursement for eligible project-related travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will be reimbursed in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the Commissioner of Minnesota Management and Budget (MMB). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has

received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

- (c) **Eligible Expenses.** Eligible expenses are those costs directly incurred by the Grantee that are solely related to and necessary for producing the work products described in Provision 2 of this Agreement. Eligible costs may include the following:

advertising costs for bids and proposals; capital expenditures for facilities, equipment and other capital assets as expressly approved by the State; Materials and supplies; Architectural and engineering services; Construction management and inspection services; Surveys and soil borings; Attorney fees solely related and necessary to accomplish the Project, as determined by the State and actual construction of the Project.

Certain other types of costs may be eligible provided that they are (1) directly incurred by the Grantee; (2) are solely related to, and necessary for, producing the work products described in Provision 2; and (3) have prior written approval of the State. Any cost not defined as an eligible cost or not included in the Project Plan shall not be paid from State funds committed to the Project.

- (d) **In-eligible Expenses.** Non-eligible costs for reimbursement means all costs not defined as eligible costs, including but not limited to the following:

Any costs incurred before the effective date of this Grant; Fund raising; Taxes, except sales tax on goods and services; Insurance, except title insurance; Attorney fees not necessary to accomplish the project; Loans, grants, or subsidies to persons or entities for development; Bad debts or contingency funds; Interest; Options for acquisition of real estate; Lobbyists; and Political contributions.

- (e) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$650,000.00. Grantee is not required to provide a local match.

#### 4.2. **Payment**

**Invoices.** To obtain reimbursement for eligible costs under this Grant, the Grantee shall provide the State with invoices and evidence that the portion of the Project for which payment is requested has been satisfactorily completed. All invoices shall be sent to the person designated in Section 6. Grantee shall submit invoices and evidence that its contribution toward the two percent of the median household income requirement is being met prior to requesting additional payments by the State. Invoices will be submitted for the amount and should differentiate, when applicable, between the Federal and Non-Federal Project costs, as well as the State and local share of the Project costs. Invoices must be received by the State within thirty (30) days after the completion of the Project or the expiration of this Grant as set forth in Section 1.2, whichever occurs first. Invoices received after that date will not be eligible for reimbursement. The State's authorized agent has final authority for acceptance of Grantee's services, determination as to whether the expenditures are eligible for reimbursement under this Grant, and verification of the total amount requested. The Grantee shall not receive payment for work found by the State to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation. At its discretion, the State may retain 10% of the total grant award until the State has determined that the Grantee has satisfactorily fulfilled all of the terms of this Grant. If requested by the State, the Grantee shall arrange for a tour of the Project area prior to release of the final ten (10) percent of the funds. Invoices must be submitted timely and according to the following schedule:

It is required that invoices be submitted, at a minimum, at the close of each state fiscal year which is July 1 – June 30. If expenses are extensive, reimbursement requests may be submitted monthly or quarterly. Please itemize the eligible expenses by the month of occurrence, not liquidation. If invoices are not received in this format, it could delay receipt of payment.

## **5 Conditions of Payment**

All services provided by the Grantee under this grant contract 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 Patrick Lynch, Floodplain Hydrologist, Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota, 55155, 651-259-5691, [pat.lynch@state.mn.us](mailto:pat.lynch@state.mn.us), 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 contract. 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 David Montgomery, Chief Administrative Officer, City of Duluth, 402 City Hall, Duluth, Minnesota 55802, 218-730-5039, [dmontgomery@duluthmn.gov](mailto:dmontgomery@duluthmn.gov). If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

## **7 Assignment, Amendments, Waiver, and Grant Contract Complete**

**7.1 Assignment.** The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office.

**7.2 Amendments.** Any amendments to this grant contract 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 contract, or their successors in office.

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

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

## **8 Liability**

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

## **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**

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 contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. 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.

## **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 Publicity and Endorsement**

12.1 **Acknowledgments.** The Grantee agrees to acknowledge the State's financial support for the Project. Any statement, press release, bid, solicitation, or other document issued describing the Project shall provide information reflecting that State funds were used to support the Project and will contain the following language:

*This Project is made possible in part by a grant provided by the Minnesota Department of Natural Resources, through an appropriation by the Minnesota State Legislature.*

Any site developed or improved by the Project shall display a sign, in a form approved by the State, stating the same information.

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

## **14 Termination**

14.1 **Termination by the State.** The State may immediately terminate this grant contract 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.

14.2 **Termination for Cause.** The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

**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 Use of State Bond- Financed Property**

"State bond- financed property" means property acquired or bettered in whole or in part with the proceeds of state general obligation bonds authorized to be issued under article XI, section 5, clause (a), of the Minnesota Constitution. Use of State bond- financed property must be operated in compliance with the provisions of Minnesota Statutes chapter 16A.695, all state and federal laws, and in a manner that will not cause the interest on the state general obligation bonds to be or become subject to federal income taxation for any reason.

**17 Invasive Species**

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.

**1. STATE ENCUMBRANCE VERIFICATION**

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

Signed: Felicia Barnes

Date: 3/26/13

SWIFT Contract/PO No(s). 60004/3000034888

**2. GRANTEE**

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**3. STATE AGENCY**

By: \_\_\_\_\_

(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution:  
Agency  
Grantee  
State's Authorized Representative - Photo Copy