

**FY 2013 STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES
2012 MINNESOTA FLOOD RELIEF GRANT AGREEMENT**

Vendor: 0000197681			Contract#: 59776			PO#: 300002955	
Line	Granted Amount	Account	Fund	FinDept ID	Approp ID	FY	Description
01	\$ 1,727,419	441502	1000	R9P32LAW	R9PCSF2	13	2012 Flood Relief
50% PAYMENT		40% PAYMENT			10% PAYMENT		
VN#1		VN#2			VN#3		
AMOUNT		AMOUNT			AMOUNT		
DATE		DATE			DATE		

For BWSR Use Only

This grant agreement is between the State of Minnesota, acting through its Board of Water and Soil Resources (State) and CITY OF DULUTH, 411 W 1st Street, 402 City Hall, Duluth 55802 (Grantee).

This grant agreement is for **2012 Minnesota Flood Relief as follows:**

Project Cost Share	\$1,362,495
Emergency Watershed Protection Program Match	\$ 55,550
Technical/Administrative Assistance	\$ 309,374
	\$ 1,727,419

Recitals

1. The Minnesota Legislature in their August 24, 2012 1st Special Session in H.F. 1, Article 1, Sec. 10, Subd. 3, appropriated cost share funding and invoked M.S. 12A.05 which authorizes waivers of State Cost Share Rules.
2. These grants are to fund erosion repair and water quality protection projects as a result of the storm event known as DR-4069.
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. As a condition of the grant, Grantee agrees to minimize administration costs.

Authorized Representative

The State's Authorized Representative is David Weirens, BWSR Land & Water Section Administrator, 520 Lafayette Road North, Saint Paul, MN 55155, 651-297-3432, or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services and performance provided under this grant agreement.

The Grantee's Authorized Representative is:

Title

Address

City

Telephone Number

If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

Grant Agreement

1 Term of Grant Agreement

- 1.1 **Effective date:** March 1, 2013 and the date the State obtains all required signatures under Minn. Stat. 16B.98, Subd. 5.

- 1.2 **Expiration date:** December 31, 2015, or until all obligations have been satisfactorily fulfilled which ever comes first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract: 7. Liability; 8. State Audits; 9. Government Data Practices; 11. Governing Law, Jurisdiction, and Venue.

2 Grantee's Duties

The Grantee will:

- 2.1 Provide technical assistance and administrative services as necessary to provide flood relief funds according to the BWSR 2012 Flood Relief Cost share Disaster Recovery Program Policy, provided to the GRANTEE, which is incorporated into this agreement by reference.
- 2.2 Use these funds to implement projects according to the BWSR 2012 Flood Relief Cost share Disaster Recovery Program Policy and approved requests identified as "Flood Recovery 2012 – Phase 3", which is, the basis for this grant, and incorporated into this agreement by reference and located in the Board's Office in St. Paul. The SWCD may shift funding to the next highest priority project as a result of project slippage or cancelation, with Board Conservationist approval in accordance with the BWSR Grant Administration Manual - *Amending a Grant or Revising a Work Plan*
- 2.3 Actively promote proper soil and water management with land users.
- 2.4 Provide in the Grantee's Annual Report a summary of the total work accomplished in a format specified by the BWSR.
- 2.5 Maintain a SWCD website, which will provide information about staff, supervisors, planning, meeting notices, and minutes, according to the SWCD Operational Handbook.
- 2.6 Display on its website the previous calendar year's detailed information on the expenditure of grant funds and measurable outcomes as a result of the expenditure of funds according to the format specified by the BWSR, by March 15 of each year.

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 Terms of Payment

- 4.1 Grant funds will be distributed in three installments: 1) the first payment of 50% will be distributed after the execution of the Grant Agreement. 2) The second payment of 40% will be distributed after the first 50% has been expended and reporting requirements have been met. Selected grantees will be required at this point to submit an interim itemized financial report and documentation of the expenditures reported there. 3) The third payment of 10% will be distributed after final requirements are met, including the submission of a final itemized financial report. Grant funds may only be used for reported expenses.
- 4.2 Any grant funds remaining unspent after the end of the expiration date stated above or after all obligations have been met will be returned to the Board within 30 days of that date.
- 4.3 The obligation of the State under this Grant Agreement will not exceed the amount stated above.
- 4.4 This grant includes an advance payment of 50 percent of the grant's total amount. Advance payments allow the grantee to have adequate operating capital for start-up costs, ensure their financial commitment to landowners and contractors, and to better schedule work into the future.

5 Conditions of Payment

All services provided by the Grantee under this grant agreement must be performed to the States satisfaction, as set forth in this agreement. Compliance will be 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 Assignment, Amendments, Waiver, and Grant contract Complete

- 6.1 **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.
- 6.2 **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.

6.3 **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 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 agreement 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 agreement.

8 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.

8.1 The books, records, documents, accounting procedures and practices of the Grantee and its designated local units of government and contractors relevant to this GRANT, may be examined at any time by the Board or Board's designee and are subject to verification. The Grantee or delegated local unit of government will maintain records relating to the receipt and expenditure of grant funds.

8.2 The Grantee or designated local unit of government implementing this Agreement will provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board if requested.

9 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 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.

10 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.

11 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 contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

12 Termination

The State may cancel this grant agreement at any time, 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.

13 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.

14 Prevailing Wage

It is the responsibility of the Grantee or contractor to pay prevailing wages on construction projects to which State prevailing wage laws apply (Minn. Stat. 177.42 – 177.44). All laborers and mechanics employed by grant recipients and subcontractors funded in whole or in part with these State funds shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality.

IN WITNESS WHEREOF, the parties have caused this Grant Agreement to be duly executed intending to be bound thereby.

APPROVED:

CITY OF DULUTH

BY:	_____
TITLE:	_____
DATED:	_____

BOARD OF WATER AND SOIL RESOURCES

BY:	_____
TITLE:	Land & Water Section Administrator _____
DATED:	_____