

**SUBGRANT AGREEMENT  
SOUTH ST. LOUIS SOIL AND WATER CONSERVATION DISTRICT  
CITY OF DULUTH**

**PARTIES**

The Parties to this Subgrant Agreement are the South St. Louis Soil and Water Conservation District (the "SWCD") and the City of Duluth (the "City"), collectively referred to as "the Parties".

**RECITALS**

The SWCD in concert with the City submitted an application and was awarded \$426,641 from the Board of Water and Soil Resources (the "BWSR") for a project (the "Project") that will use FY 2019 Clean Water Fund Competitive Grants Program funding. The grant was entitled "Cool it! Continued Efforts to Solve the Temperature Impairment on Miller Creek using 13 Stormwater BMPs" (the "Grant").

The Parties desire to enter into a Subgrant Agreement for the Project which scope is divided into two components, Lincoln Park and Miller Creek a/k/a Piedmont.

**AGREEMENT**

**1. Term of Agreement**

- 1.1 Effective Date: shall be the date when both Parties have executed the Subgrant Agreement.
- 1.2 Expiration Date: shall be December 31, 2021, 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: 2.6 Publicity and Endorsement; 7 Liability; 8 State Audits; 9 Government Data Practices; 10 Governing Law, Jurisdiction and Venue; and 11 Intellectual Property Rights.

**2. Agreement Among The Parties**

- 2.1 The City will hire any necessary agents and contractors to design and construct the Project. The City will acquire input from the SWCD on the contracts and construction plans for the project. The City will provide SWCD with the names of the technical and engineering entities providing assistance to the Project, their credentials for providing this assistance or the method for selecting appropriate technical providers, and approved design and construction standards for the practices or Project to be implemented. SWCD will review and approve design at 30/ 60/ and 90% of development. SWCD will approve final construction plans before any part of the Project is bid out.
- 2.2 The City will administer such contracts and be responsible for permitting and project management tasks associated with completing the Projects all in accordance with the BWSR approved work plan for the Project which is incorporated into this Subgrant Agreement by reference.
- 2.3 Only native plants can be used on the Project.

- 2.4 The SWCD will be responsible for the administration of the BWSR Grant tasks including reporting, reimbursement requests, and any other tasks associated with the Grant funding.
- 2.5 The City will be responsible for the long term maintenance of the installed BMPs for a period of no less than 10 years. An operation and maintenance plan must be prepared by technical staff and be included with the design standards. An inspection schedule, procedure, and assured access to the practice site shall be included as a component of maintaining the effectiveness of the practice. Should the City fail to maintain the practice for said 10-year period, the City is liable to SWCD for an amount up to 150% of the Subgrant funding unless the failure was caused by reasons beyond the City's control, or if conservation practices are applied at the City's expense that provide equivalent protection of the soil and water resources.
- 2.6 Any publicity regarding the subject matter of this Subgrant Agreement must identify the BWSR as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, signs, and similar public notices prepared by the City or any contractors with respect to the Project. The City will comply with requirements for project signage pursuant to Minnesota Laws 2010, Chapter 361, article 3, section 5(b). Signage must be posted at the Lincoln Park and Piedmont sites. The City must not claim that the BWSR endorses its products or services.
- 2.7 The City will submit an annual progress report to the SWCD by January 15th of each year on the status of Project implementation by the City. Information provided must conform to the requirements and formats set by the BWSR. The City will submit a final progress report to the SWCD by January 15, 2022 or within 20 days of completion of the Project, which ever occurs sooner. Information provided must conform to the requirements and formats set by the BWSR.

### **3. Funding**

- 3.1 SWCD will retain \$7,500 of the Grant for administration of the Grant. The Subgrant funding to the City for the Project is in an amount not-to-exceed \$419,141; \$299,525 for Lincoln Park and \$119,616 for Piedmont. The City will provide the 25% matching fund requirement on the total Grant amount of \$426,641; said match is in the amount of \$106,660.00. The match for Lincoln Park is \$76,212.50 and will be provided by the federal National Park Service, Outdoor Recreation Legacy Partnership Program Grant that the City secured for Lincoln Park; upon receipt said grant monies will be deposited into the Half & Half Tourism Tax, Fund 452-030-5530-HANDHTAX-150. The match for Piedmont is \$30,447.75 and will be provided by the federal MN Lake Superior Coastal Program Grant that the City secured for Piedmont; upon receipt said grant monies will be deposited into the Half & Half Tourism Tax, Fund 452-303-5530-HANDHTAX-1527-12. Therefore, the City's matching funds will be payable from these Tourism Tax Funds.
- 3.2 The City will receive Subgrant funds in three installments which must be secured by the SCWD before they can be disbursed to the City on the following schedule:
  - a.) the first payment of 50% will be distributed after the execution of this Subgrant

Agreement. b) the second payment of 40% will be distributed after the first payment of 50% has been expended and reporting requirements have been met. Documentation of expenditures may be required at this time. The third payment of 10% will be distributed after the Subgrant has been fully expended and reporting requirements are met. The final payment must be requested within 20 days of the expiration date of this Subgrant Agreement. All costs must be incurred within the term of this Subgrant Agreement.

#### **4. Authorized Representatives**

4.1 The City's Authorized Representative for the Lincoln Park Project is:

Lisa Luukkala  
City of Duluth  
Parks and Recreation Office  
Ground Floor City Hall  
Telephone: (218) 730-4312  
Email: [lluukkala@duluthmn.gov](mailto:lluukkala@duluthmn.gov)

And for the Piedmont Project is:

Jim Shoberg  
City of Duluth  
Parks and Recreation Office  
Ground Floor City Hall  
Telephone: (218) 730-4316  
Email [jshoberg@duluthmn.gov](mailto:jshoberg@duluthmn.gov)

4.2 The SWCD's Authorized Representative is:

Katie Kubiak  
Conservation Specialist  
215 North 1<sup>st</sup> Avenue East, Room 301  
Duluth, MN 55802  
Telephone: (218) 723-4946  
Email: [kate.kubiak@southstlouisswcd.org](mailto:kate.kubiak@southstlouisswcd.org)

#### **5. Assignment, Amendments, Waiver and Contract Complete**

5.1 Assignment. No Party shall assign, or transfer any rights or obligations under this Subgrant Agreement without the prior written consent of the other Party approved by the same individuals who executed and approved the original Subgrant Agreement, or their successors in office.

5.2 Amendments. Any amendment to this Subgrant 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 Subgrant Agreement, or their successors in office.

5.3 Waiver. If the any Party fails to enforce any provision of this Subgrant Agreement, that failure does not waive the provision or that Party's right to enforce it.

- 5.4 Agreement Complete. This Subgrant Agreement contains all negotiations and agreements between the City and the SWCD. No other understanding regarding this Subgrant Agreement, whether in written or oral form may be used to bind any Party.

## **6. Prevailing Wage and Municipal Contracting Law**

The City will pay prevailing wage for the Project. All laborers, mechanics and apprentice-trainees employed in the Project by the City shall be paid wages at a rate not less than those prevailing on projects of a character similar in the City. Bid requests must state that Project is subject to prevailing wage.

## **7. Liability**

Each party will be responsible for its own acts and the results thereof and shall not be responsible or liable for the other Party's actions or consequences of those actions. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466, governs the Parties' liability. Nothing in this Subgrant Agreement is intended to waive or limit the provision of Minn. Stat. ch. 466, or any other law, legislative or judicial, which limits government liability. For purposes of determining total liability for damages, the participating governmental units are considered to be a single governmental unit, the total liability of which shall not exceed the limits for a single governmental unit as provided in Minn. Statutes, Section 466.04, Subd. 1.

## **8. Audits**

The City's books, records, documents, and accounting procedure and practices of the City relevant to this Subgrant Agreement are subject to examination by the SWCD, the BWSR and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of the Subgrant Agreement.

## **9. Government Data Practices**

The Parties must comply with the Minnesota Government Data Practices Act, Minn.Stat. Ch. 13, as it applies to all data provided under this Subgrant Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Parties under this Subgrant Agreement. The civil remedies of Minn. Stat. 13.08 apply to the release of the data referred to in this clause by any of the Parties.

## **10. Governing Law, Jurisdiction, and Venue**

Minnesota Law, without regard to its choice of law provisions governs this Subgrant Agreement. Venue for all legal proceedings involving this Subgrant Agreement, or its breach, must be in the appropriate state or federal court, with competent jurisdiction in St. Louis County, Minnesota.

## **11. Intellectual Property Rights**

The City acknowledges that the BWSR owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks created and paid for with respect to the Project under this Subgrant Agreement.

## **12. Termination**

- 12.1 **Termination for Insufficient Funding by City.** The City may immediately terminate this Subgrant Agreement if it does not obtain federal MN Lakes Superior Coastal Program Grant funding from the National Oceanic and Atmospheric Administration and a National Park Service, Outdoor Recreation Legacy Partnership Program Grant for the Project, or if funding cannot be continued at a level sufficient to allow for the payments provided herein. Termination must be by written notice to the SWCD. The City is not obligated to pay for any costs of the Projects that are incurred after the notice and effective date of termination. The City will not be assessed any penalty if the Subgrant Agreement is terminated because of the decision of funding sources, to not appropriate funds.
- 12.2 **Termination for Insufficient Funding by SWCD.** The SWCD may terminate this Subgrant Agreement if it does not obtain Clean Water Fund Competitive Grants Program funding from the BWSR or if funding cannot be continued at a level sufficient to allow for the payments provided herein. Termination must be by written notice to the City. The SWCD is not obligated to pay for any costs of the Projects except using Clean Water Fund Competitive Grants Program funds.

**13. Severability**

The provisions of this Subgrant Agreement shall be deemed severable. If any part of this Subgrant Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Subgrant Agreement unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Subgrant Agreement with respect to either Party.

**14. Merger**

This Subgrant Agreement is the final expression of the agreement of the Parties and the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings, or agreements.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date(s) indicated below:

**CITY OF DULUTH**

**SOUTH ST. LOUIS SOIL AND WATER  
CONSERVATION DISTRICT**

By: \_\_\_\_\_  
Emily Larson, Mayor

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

Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
Chelsea Helmer, City Clerk

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

Date: \_\_\_\_\_, 2019

Date: \_\_\_\_\_, 2019

Countersigned:

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

Josh Bailey, City Auditor

Approved as to form:

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

Gunnar Johnson, City Attorney

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