



State of Minnesota

Joint Powers Agreement

SWIFT Contract Number: _____

This Agreement is between the State of Minnesota, acting through its acting through its Commissioner of Agriculture (“State”) and the City of Duluth. (“Governmental Unit”).

Recitals

Under Minnesota Statutes § 471.59, subd. 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of implementing activities to suppress EAB populations in the City of Duluth in order to slow the spread of EAB from the city into surrounding areas. The USDA Forest Service Northeastern Area State and Private Forestry has awarded a domestic grant. Activities will consist of removal and treatment of emerald ash borer infested trees. The authority requires a match of 50/50.

Agreement

1. Term of Agreement

- 1.1 Effective Date: January 1, 2021 or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.
- 1.2 Expiration Date: December 31, 2023 or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2. Agreement between the Parties

This is an award of Federal financial assistance. The sub-recipient to this agreement is subject to the OMB guidance in subparts A through F of 2 CFR Part 200 as adopted and supplemented by the USDA in 2 CFR Part 400. Adoption by USDA of the OMB guidance in 2 CFR 400 gives regulatory effect to the OMB guidance in 2 CFR 200 where full text may be found.

The subrecipient agrees to provide documentation of expenses paid for all matching funds up to \$65,000 and expenses additionally incurred to be reimbursed up to \$65,000 for a total of \$130,000. Only expenses incurred after the date of this agreement will be valid for the reimbursement portion of this agreement. Expenditures prior to the signature date of this agreement and after the start date of the grant 3/1/2017, can be used for the matching portion of the agreement.

The subrecipient agrees to provide certification and all relevant documentation of expenses as proof of matching and expenses to be reimbursed which may include, paid invoices, payroll records and processed/cancelled checks which must reflect services actually performed and the State’s Authorized Representative must accept those services.

The recipient acknowledges the subrecipient will not charge indirect costs as it relates to this agreement.

The subrecipient agrees to furnish and transport all labor, equipment and materials necessary to complete the treatments and removals of infested ash trees. The subrecipient will also obtain all necessary insurance, licenses, and permits, payments of fees, taxes and administration associated with the performance of this work.

The subrecipient will perform all removals and disposal of debris before the active time of emerald ash borer and transport all material and debris to closest disposal site during the inactive period of emerald ash borer and be destroyed before the active period begins. Emerald ash borer active period runs from May 1- September 30.

The subrecipient will apply treatments in accordance with the pesticide label.

The subrecipient will not use this grant for the preemptive removal of ash trees that are not infested or show sign of emerald ash borer infestation.

The subrecipient agrees to provide size, condition and location of both removed and treated trees as well as dates of removals and treatments. These should be provided quarterly along with invoices to the recipient.

The subrecipient will be responsible for notifying the public utility companies (i.e. telephone, electric, gas, and cable) when needed to ensure the safe removal of the tree to avoid causing fires, shocks or sparks damage to wires, cables, poles, boxes or other equipment owned or operated by the public utility companies. The subrecipient will also be responsible for notifying the utility companies as to when service can be restored and to cooperate with the utility companies to ensure service is restored prior to nightfall each day.

The subrecipient agrees that equipment, ladders, saws, chippers and tools will not be left unattended. On a nightly basis all equipment and tools will be stored in such manner to ensure that residents and the public do not have access to them.

The subrecipient agrees to perform the work with due care taking precautions against injury to persons, damage to property and interference with vehicular or pedestrian traffic. The subrecipient agrees to take necessary precautions to ensure the safety of all person engaged in the work of this contract. The subrecipient agrees to protect against damage to all existing trees, plants, grass vegetation or other fixtures.

The subrecipient certifies that it is not presently debarred, proposed for debarment, suspended, or declared ineligible for covered transactions by any federal agency or department. The subrecipient also certifies that within the past three years it has not been convicted of or had civil judgment rendered against it for a fraudulent contract or transaction, violation of federal or state antitrust laws, or the commission of embezzlement, theft, forgery, bribery, falsifying, or destroying records, receiving stolen property or making false statements

3. Payment

The State will promptly pay the subrecipient after the subrecipient presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services.

The subrecipient must submit an invoice for reimbursement with supporting documentation no later than 15 days after the end of each quarter as follows:

- Quarter end March 31, 2021 due April 15, 2021

- Quarter end June 30, 2021 due July 15, 2021
- Quarter end September 30, 2021 due October 15, 2021
- Quarter end December 31, 2021 due January 31, 2022
- Quarter end March 31, 2022 due April 15, 2022
- Quarter end June 30, 2022 due July 15, 2022
- Quarter end September 30, 2022 due October 15, 2022
- Quarter end December 31, 2022 due January 31, 2023
- Quarter end March 31, 2023 due April 15, 2023
- Quarter end June 30, 2023 due July 15, 2023
- Quarter end September 30, 2023 due October 15, 2023
- Quarter end December 31, 2023 due January 31, 2024

The subrecipient must also submit proof of all expenses paid and supporting documentation for the cost matching share of the agreement.

Payments under this agreement will be made from federal funds obtained by the State through USDA Forest Service, CFDA Number 10.680. The subrecipient is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the subrecipient's failure to comply with federal requirements.

All services provided by the subrecipient under this 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, and rules. The subrecipient will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

All work will be completed by the grant ending date of December 31, 2018 and the final invoice is submitted. Invoices will reference this Agreement by the contract number and the name of the State's Authorized Representative and will be submitted to:

Minnesota Department of Agriculture

Accounts Payable

625 Robert Street North

St. Paul, MN 55115

Final payment to the subrecipient will be paid when the State's Authorized Representative determines that the subrecipient has satisfactorily fulfilled all the terms of this agreement.

The total obligation of the State under this Agreement will not exceed \$65,000.

4. **Authorized Representatives**

The State's Authorized Representative is Angie Ambourn, Minnesota Department of Agriculture, 625 Robert Street North, St. Paul, MN 55115, 651-201-6073, Angie.Ambourn@state.mn.us, or her successor.

The State's Authorized Financial Representative is Alison Sundahl and/or Christine Pham Minnesota Department of Agriculture, 625 Robert Street North, St. Paul, MN 55115, 651-201-6073, Alison Sundahl@state.mn.us, Christine Pham@state.mn.us or her successor.

The Governmental Unit's Authorized Representative is Dale Sellner, Park and Grounds Supervisor, City of Duluth 411 West 1st Street, Duluth, MN 55802, 218-730-4303, dsellner@DuluthMN.gov, or his successor successor.

The Governmental Unit's Authorized Financial Representative is Cheryl Skafte, Provisional Assistant Manager | Parks and Recreation, City of Duluth 411 West 1st Street, Duluth, MN 55802, 218-730-4334, cskafte@DuluthMN.gov, or her successor.

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

- 5.1 Assignment. The Governmental Unit may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors.
- 5.2 Amendments. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.
- 5.3 Waiver. If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 5.4 Contract Complete. This Agreement contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6. Indemnification.

6.1 In the performance of this Agreement, the Indemnifying Party must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Indemnifying Party's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

The Indemnifying Party is defined to include the Governmental Unit, the Governmental Unit's reseller, any third party that has a business relationship with the Governmental Unit, or Governmental Unit's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Agreement.

6.2 Nothing within this Agreement, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

7. State Audits.

Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Agreement.

8. Government Data Practices.

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Governmental Unit or the State.

If the Governmental Unit receives a request to release the data referred to in this clause, the Governmental Unit must immediately notify and consult with the State's Authorized Representative as to how the Governmental Unit should respond to the request. The Governmental Unit's response to the request shall comply with applicable law.

9. Venue

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

10. Termination

10.1 Termination. The State or the Governmental Unit may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

10.2 Termination for Insufficient Funding. The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Governmental Unit. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Governmental Unit will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Governmental Unit notice of the lack of funding within a reasonable time of the State's receiving that notice.

11. E-Verify Certification (in accordance with Minn. Stat. § 16C.075).

For services valued in excess of \$50,000, the Governmental Unit certifies that as of the date of services performed on behalf of the State, Governmental Unit and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. The Governmental Unit is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

1. State Encumbrance Verification

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

Print Name: _____

Signature: _____

Title: _____ Date: _____

SWIFT Contract No. _____

2. Governmental Unit

Print Name: _____

Signature: _____

Title: _____ Date: _____

Print Name: _____

Signature: _____

Title: _____ Date: _____

Print Name: _____

Signature: _____

Title: _____ Date: _____

Print Name: _____

Signature: _____

Title: _____ Date: _____

3. State Agency

With delegated authority

Print Name: _____

Signature: _____

Title: _____ Date: _____

4. Commissioner of Administration

As delegated to The Office of State Procurement

Print Name: _____

Signature: _____

Title: _____ Date: _____

Admin ID: _____