

# Exhibit A

## STATE OF MINNESOTA GRANT CONTRACT AGREEMENT

This grant contract agreement is between the State of Minnesota, acting through its Commissioner of Natural Resources ("STATE") and the City of Duluth, 411 W. First Street, Duluth, MN 55802 ("GRANTEE").

### Recitals

1. Under Minn. Stat. 84.026, 297A. 94 and Minnesota Laws of 2021, First Special Session, Ch. 6, Art. 1, Sec. 3, Subd. 9 (a), the State is empowered to enter into this grant.
2. Pursuant to Minnesota Laws and Statutes, these funds are dedicated to the two Minnesota Zoo Operations.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract agreement to the satisfaction of the State. Pursuant to [Minn.Stat.§16B.98](#), Subd.1, the Grantee agrees to minimize administrative costs as a condition of this grant.

### Grant Contract Agreement

#### 1 Term of Grant Contract Agreement

##### 1.1 *Effective date:*

July 1, 2021 or the date the State obtains all required signatures under [Minn. Stat. §16B.98, Subd. 5](#), whichever is later.

##### 1.2 *Expiration date:*

June 30, 2023, 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 agreement: 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:

- 2.1 Comply with required grants management policies and procedures set forth through [Minn. Stat. §16B.97, subdivision 4\(a\)\(1\)](#)
- 2.2 Use the funds provided for the operations of the Lake Superior Zoo.
- 2.3 Report to the Authorized Representative the detailed information on the expenditure of grant funds.

#### 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 pay for all services performed by the Grantee under this grant contract agreement as follows:

##### *(a) Compensation*

The State will provide quarterly payments to the Grantee as a result of funds collected and made available for this purpose.

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## **(b) Total Obligation.**

The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract agreement will not exceed \$330,000 in the first year and \$190,000 in the second year.

## **4.2 Payment**

### **(a) Invoices**

The State will promptly pay the Grantee after the Grantee presents a quarterly invoice along with a Project Activity Expenditure Spreadsheet (Attachment A) outlining the incurred expenses. Payment will be made to the Grantee based on the fund balance available for the year.

### **(b) Unexpended Funds**

The Grantee must promptly return to the State any unexpended funds that have not been accounted for annually in a financial report to the State due at grant closeout.

## **4.3 Contracting and Bidding Requirements**

Per [Minn. Stat. §471.345](#), grantees that are municipalities as defined in Subd. 1 must follow the law.

- (a)** For projects that include construction work of \$25,000 or more, prevailing wage rules apply per [Minn. Stat. §§177.41](#) through [177.44](#). These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole.

## **5 Conditions of Payment**

All services provided by the Grantee under this grant contract 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 Katherine Sherman-Hoehn, Grants Manager, 500 Lafayette Road, St. Paul, MN 55155-4010, (651) 259-5533 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 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 Joshua Bailey, City Auditor, 411 W. First St., Duluth, MN 55802, [jbailey@duluthmn.gov](mailto:jbailey@duluthmn.gov), or his/her successor. If the Grantee's Authorized Representative changes at any time during this grant contract agreement, the Grantee must immediately notify the State.

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

### **7.1 Assignment**

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

### **7.2 Amendments**

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Any amendments to this grant contract 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 contract agreement, or their successors in office.

## 7.3 *Waiver*

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

## 7.4 *Grant Contract Agreement Complete*

This grant contract agreement contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract agreement, 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 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 contract 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 Rights**

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

**10.2.1** 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 contract. 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 contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies,

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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 contract. 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 contract. 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.

## **10.2.2 Obligations**

### **(a) 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 contract, 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.

### **(b) 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 Publicity and Endorsement**

### **12.1 Publicity**

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Any publicity regarding the subject matter of this grant contract agreement must identify the State as the sponsoring agency and 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 contract agreement. All projects primarily funded by state grant appropriations must publicly credit the State of Minnesota, including on the grantee's website when practicable.

## 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 agreement. Venue for all legal proceedings out of this grant contract 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 contract 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 **American Disabilities Act**

The Grantee must comply with the 2010 American Disabilities Act Standards for Accessible Design where applicable.

## 17 **Monitoring**

The State 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 program completion. At least one monitoring visit per grant period on all state grants of over \$50,000 will be conducted and at least annual monitoring visits on grants of over \$250,000.

## 18 **Invasive Species Prevention**

Grantees must follow Minnesota DNR's Operational Order 113, which requires preventing or limiting the introduction, establishment and spread of invasive species during activities on public waters and DNR-administered lands. This applies to all activities performed on all lands under this grant agreement and is not limited to lands under DNR control or public waters. Duties are listed under Sections II and III (p. 5-8) of Operational Order 113 which may be found here: [Link to Operational Order 113](http://files.dnr.state.mn.us/assistance/grants/habitat/heritage/oporder_113.pdf) ([http://files.dnr.state.mn.us/assistance/grants/habitat/heritage/oporder\\_113.pdf](http://files.dnr.state.mn.us/assistance/grants/habitat/heritage/oporder_113.pdf))

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## 19 Pollinator Best Management Practices

Habitat restorations and enhancements conducted on DNR lands and prairie restorations on state lands or on any lands using state funds are subject to pollinator best management practices and habitat restoration guidelines pursuant to [Minnesota Statutes, section 84.973](#). Practices and guidelines ensure an appropriate diversity of native species to provide habitat for pollinators through the growing season. Current specific practices and guidelines to be followed for contract and grant work can be found here: [Link to Specific Pollinator Best Management Practices for DNR Grants and Contracts](#) ([http://files.dnr.state.mn.us/natural\\_resources/npc/bmp\\_contract\\_language.pdf](http://files.dnr.state.mn.us/natural_resources/npc/bmp_contract_language.pdf)).

### Attachments

#### A. Project Activity Expenditure Spreadsheet

#### 1. STATE ENCUMBRANCE VERIFICATION

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

Signed: \_\_\_\_\_

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

SWIFT Contract/PO No(s). \_\_\_\_\_

#### 2. GRANTEE

The Grantee certifies that the appropriate person(s) have executed the grant contract agreement 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