

# Joint Powers Agreement

State of Minnesota

Doc Type: Contract

SWIFT Contract No.: J0000000000000000158468  
PO No.: 30000  
Agency Interest No.: 186332  
Activity ID No.: PRO20180005

## Recitals

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1. Under Minn. Stat. §§ 15.061 and 471.59, subd. 10, the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of the Duluth Streams E. Coli Assessment Project ("Project").
3. The LGU represents that it is duly qualified and agrees to perform all services described in this Agreement to the satisfaction of the State.

## Agreement

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### 1. Term of Agreement

**1.1 Effective date:** June 11, 2019, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. **The LGU must not begin work under this Agreement until this Agreement is fully executed and the LGU has been notified by the State's Authorized Representative to begin the work.**

**1.2 Expiration date:** December 31, 2020, 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 Agreement: Liability; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue.

### 2. LGU's duties

The LGU, who is not a state employee, will conduct the Project and follow the Budget for the said Project as specified in **Attachment A**, which is attached and incorporated into this Agreement. No terms or conditions of the LGU's proposal will be construed to modify, diminish, or derogate the terms and conditions of this Agreement.

All water monitoring programs and projects that involve environmental data acquisition from direct measurement activities or laboratory analysis must have an approved Quality Assurance Project Plan (QAPP) to ensure all data collected are of known and suitable quality and quantity. The LGU shall cooperate in the development of the QAPP as necessary, and comply with the requisite elements of the plan.

The LGU shall, when applicable: 1) Organize water quality data into a spreadsheet format suitable for entry into Environmental Quality Information System (EQiS). 2) Work with the MPCA Authorized Representative and data management staff to provide information on water quality or biological sampling, as needed, to enter the monitoring data in EQiS. The LGU shall: A) Provide basic information including project name, purpose, staff assigned, and sampling procedures for project establishment in EQiS, using the MPCA Project Establishment Form. B) Provide information on all laboratories used for water sample analysis, using the MPCA Lab Establishment Form. C) Provide information on monitoring station location for station establishment in EQiS using the MPCA Station Establishment Form. Said Forms and other Storage and Retrieval Water Data Repository (STORET) information are

available at MPCA EQUIS website, which may be accessed at: <http://www.pca.state.mn.us/index.php/water/water-monitoring-and-reporting/equis/equis-program-and-surface-water-data.html>.

With the exception of diatom core sampling and invertebrate analysis, all laboratory work conducted under this Project must be done by a laboratory currently certified by the Minnesota Department of Health for the parameter being measured.

The LGU shall ensure that all personnel involved in the performance of this Agreement are properly qualified, trained, and competent; and shall be, where applicable, appropriately medically monitored during activities undertaken.

### 3. Time

The LGU must comply with all the time requirements described in this Agreement. In the performance of this Agreement, time is of the essence.

### 4. Consideration and payment

**4.1 Consideration.** The State will pay for all services performed by the LGU under this Agreement as follows:

- (a) **Compensation.** The LGU will be paid in accordance with the breakdown of costs as set forth in the detailed Budget section of **Attachment A**, which is attached and incorporated into this Agreement.
- (b) **Travel expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the LGU as a result of this Agreement will not exceed the total amount set forth in travel expense section of the detailed Budget section of **Attachment A**, which is attached and incorporated into this Agreement, provided that the LGU will be reimbursed for travel and subsistence expenses 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 office, which is incorporated into this Agreement by reference and which can be viewed at: <http://www.mmd.admin.state.mn.us/commissionersplan.htm>.
- (c) **Total obligation.** The total obligation of the State for all compensation and reimbursements to the LGU under this Agreement will not exceed \$99,966.00 (**Ninety-Nine Thousand Nine Hundred Sixty Six Dollars**)

#### 4.2 Payment

- (a) **Invoices.** The State will promptly pay the LGU after the LGU presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule: **monthly or at least quarterly.**

Invoices will reference the SWIFT Contract number, Purchase Order number, and the name of the State's Authorized Representative and will be submitted electronically to: [mpca.ap@state.mn.us](mailto:mpca.ap@state.mn.us)

If there is a problem with submitting an invoice electronically, please contact the Accounts Payable Unit at 651-757-2491.

The LGU shall submit an invoice for the final payment upon submittal of the final progress and financial report within 30 (thirty) days of the original or amended end date of this Agreement. State reserves the right to review submitted invoices after 30 (thirty) days and make a determination as to payment.

- (b) **Retainage.** Under Minn. Stat. § 16C.08, subd.2(10), no more than 90 percent of the amount due under this Agreement may be paid until the final product of this Agreement has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the LGU has satisfactorily fulfilled all the terms of this Agreement.

The ten percent (10%) retainage will be calculated and withheld per invoice.

- (c) **Federal funds.** N/A.

**4.3 Reporting requirements.** The LGU shall submit to the State for review and approval semi-annual reports in a format prescribed by the State. Semi-Annual Reports shall be due to the State each February 1 and August 1 during the life of the Agreement. The January 1 -- June 30 reporting period will be addressed in the August 1 report; the July 1 -- December 31 reporting period will be addressed in the February 1 report. **Payments shall be withheld if reporting requirements have not been met.**

## 5. Clean Water Funding

### 5.1 Legacy Logo

Minn. Stat. § 114D.50 subd. 4 (f) states: "When practicable, a direct recipient of an appropriation from the clean water fund shall prominently display on the recipient's Web site home page the legacy logo required under Laws 2009, chapter 172, article 5, section 10, as amended by Laws 2010, chapter 361, article 3, section 5, accompanied by the phrase "Click here for more information." When a person clicks on the legacy logo image, the Web site must direct the person to a Web page that includes both the contact information that a person may use to obtain additional information, as well as a link to the Legislative Coordinating Commission Web site required under section [3.303, subdivision 10](#).

Clean Water Land and Legacy Amendment Logo Usage Guidelines:

[http://www.legacy.leg.mn/sites/default/files/resources/Legacy\\_Logo\\_Guidelines.pdf](http://www.legacy.leg.mn/sites/default/files/resources/Legacy_Logo_Guidelines.pdf)

Download the Legacy Logo: <http://www.legacy.leg.mn/legacy-logo/legacy-logo-download>

### 5.2 Reporting FTEs

Minn. Stat. §3.303, Subd. 10 (2)(vi) requires that information provided on the Legislative Coordinating Commission's Legacy Fund website must include specific information on all projects receiving funding: "(vi) the number of full-time equivalents funded under the project. For the purposes of this item, "full-time equivalent" means a position directly attributed to the receipt of money from one or more of the funds covered under this section, calculated as the total number of hours planned for the position divided by 2,088."

## 6. Conditions of payment

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

## 7. Authorized Representative

The State's Authorized Representative/Project Manager is **Tom Estabrooks**, or his successor, 525 Lake Avenue South, Suite 400, Duluth, Minnesota 55802, 218-302-6608, [tom.estabrooks@state.mn.us](mailto:tom.estabrooks@state.mn.us) and has the responsibility to monitor the LGU's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, the State's Authorized Representative/Project Manager will certify acceptance on each invoice submitted for payment.

The LGU's Authorized Representative is **Diane Desotelle**, or her successor, 411 W 1<sup>st</sup> Street, Duluth, MN 55802, 218-730-4329, [d-desotelle@duluthmn.gov](mailto:d-desotelle@duluthmn.gov). If the LGU's Authorized Representative changes at any time during this Agreement, the LGU must immediately notify the State.

## 8. Subcontracting

If the LGU decides to fulfill its obligations and duties under this Agreement through a subcontractor, to be paid for by funds received under this Agreement, the LGU shall not execute an agreement with the subcontractor or otherwise enter into a binding agreement until it has first received written approval from the MPCA's Authorized Representative. All subcontracts shall reference this Agreement and require the subcontractor to comply with all of the terms and conditions of this Agreement. The LGU shall be responsible for the satisfactory and timely completion

of all work required under any subcontract and the LGU shall be responsible for payment of all subcontracts. The LGU shall pay all subcontractors, less any retainage, within 10 calendar days of receipt of payment to the LGU by the State for undisputed services provided by the subcontractor and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor.

The LGU must follow their policies and procedures for obtaining subcontractors and/or policies and procedures per Minn. Stat. § 471.345 as applicable.

## 9. Change Orders

If the State's Project Manager or the LGU's Authorized Representative identifies a change needed in the workplan and/or budget, either party may initiate a Change Order using the Change Order Form provided by the MPCA. Change Orders may not delay or jeopardize the success of the Project, alter the overall scope of the Project, increase or decrease the overall amount of the Agreement, or cause an extension of the term of this Agreement. Major changes require an Amendment rather than a Change Order.

The Change Order Form must be approved and signed by the State's Project Manager and the LGU's Authorized Representative **in advance of doing the work**. Documented changes will then become an integral and enforceable part of the Agreement. The MPCA has the sole discretion on the determination of whether a requested change is a Change Order or an Amendment. The state reserves the right to refuse any Change Order requests.

## 10. Assignment, amendments, waiver, and Agreement complete

**10.1 Assignment.** The LGU 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 same parties who executed and approved this Agreement, or their successors in office.

**10.2 Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

**10.3 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.

**10.4 Agreement complete.** This Agreement contains all negotiations and agreements between the State and the LGU. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

## 11. Liability

Each party agrees that it shall be responsible for its own acts and omissions and shall not be responsible for the acts or omissions of the other party. Each party therefore agrees that it shall assume liability for itself, its agents and employees for any injury to persons or property resulting in any manner from the conduct of its own operations and the operations of its agents and employees under this Agreement, and for any loss, cost, damage, or expense resulting at any time from failure to exercise proper precautions, by itself or through its agents and employees.

Nothing in this Agreement is intended to be construed as a waiver of the State Tort Claims Act, Minn. Stat. § 3. 736, the Municipal Tort Claims Act, Minn. Stat. ch. 466, or any law, legislative or judicial, limiting governmental liability. This clause will not be construed to bar any legal remedies either party may have against the other for its failure to fulfill its obligations under this Agreement.

## 12. State audits

Under Minn. Stat. § 16C.05, subd. 5, the LGU's books, records, documents, and accounting procedures and practices relevant to this Agreement 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 Agreement.

### 13. Government data practices and intellectual property

**13.1 Government data practices.** The LGU 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 LGU under this Agreement. 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 LGU or the State.

If the LGU receives a request to release the data referred to in this clause, the LGU must immediately notify the State. The State will give the LGU instructions concerning the release of the data to the requesting party before the data is released.

#### 13.2 Intellectual property rights.

(a) **Intellectual property rights:** The rights, title, and interest in all of the intellectual property rights, including all copyrights, patents, trade secrets, trademarks, and service marks in the works and documents, shall be jointly owned by the LGU and the State. The "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 LGU, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Agreement. "Works" includes documents. The "documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the LGU, its employees, agents, or subcontractors, in the performance of this Agreement. The ownership interests of the State and the LGU in the works and documents shall be equal. The party's ownership interest in the works and documents shall not be reduced by any royalties or revenues received from the sale of the products or the licensing or other activities arising from the works and documents. Each party hereto shall, at the request of the other, execute all papers and perform all other acts necessary to transfer or record the appropriate ownership interests in the works and documents.

#### (b) **Obligations**

- (1) 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 LGU, including its employees and subcontractors, in the performance of this Agreement, the LGU will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon. All decisions regarding the filing of patent, copyright, trademark or service mark applications and/or registrations shall be the joint decision of the LGU and the State, and costs for such applications shall be divided as agreed by the parties at the time of the filing decisions. In the event the parties cannot agree on said filing decisions, the filing decision will be made by the State.
- (2) Representation: The LGU 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 LGU and the State, as agreed herein, and that no LGU employee, agent, or subcontractors retains any interest in and to the works and documents. The LGU represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of others. The LGU shall indemnify; defend, and hold harmless the State, at the LGU'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 LGU shall 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 LGU's or the State's opinion is likely to arise, the

LGU 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 shall be in addition to and not exclusive of other remedies provided by law.

- (c) **Use of works and documents:** The State and LGU shall jointly have the right to make, have made, reproduce, modify, distribute, perform, and otherwise use the works, including documents produced under this Agreement, for noncommercial research, scholarly work, government purposes, and other noncommercial purposes without payment or accounting to the other party. No commercial development, manufacture, marketing, reproduction, distribution, sales or licensing of the works, including documents, shall be authorized without a future written contractual agreement between the parties.
- (d) **Possession of documents:** The documents may remain in the possession of the LGU. The State may inspect any of the documents at any reasonable time. The LGU shall provide a copy of the documents to the State without cost upon the request of the State.
- (e) **Survivability:** The rights and duties of the State and the LGU, provided for above, shall survive the expiration or cancellation of this Agreement.

#### 14. Insurance requirements

Below are the minimum insurance limits required by the State of Minnesota for any entity that is **not** a state Agency or Local Government Unit (LGU) unless otherwise noted (\*\*).

**14.1** LGU shall not commence work under the Agreement until they (or subcontractor) have submitted acceptable evidence of insurance and the State of Minnesota has approved such insurance. LGU or subcontractor shall maintain such insurance in force and effect throughout the term of the Agreement. A certificate of insurance is acceptable evidence.

**14.2** Subcontractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

- (a) **Workers' Compensation Insurance.** Subcontractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, LGU will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** amounts are as follows:

- \$100,000 -- Bodily Injury by Disease per employee
- \$500,000 -- Bodily Injury by Disease aggregate
- \$100,000 -- Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts subcontractor from Workers' Compensation insurance or if the subcontractor has no employees in the State of Minnesota, subcontractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes LGU from the Minnesota Workers' Compensation requirements.

If during the course of the Agreement the subcontractor becomes eligible for Worker's Compensation, the subcontractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

- (b) **Commercial General Liability Insurance.** Subcontractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Agreement and in any case work is subcontracted the LGU will require the subcontractor to provide Commercial General Liability. Insurance **minimum** amounts are as follows:

- \$2,000,000 -- per occurrence
- \$2,000,000 -- annual aggregate
- \$2,000,000 -- annual aggregate -- Products/Completed Operations

\*\*For LGUs, the coverage shall be maintained in conformance with the Tort Claims limits set forth in Minn. Stat. ch. 466, with limits not less than \$500,000 per claimant and \$1,500,000 per occurrence for bodily injury and property damage.

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage  
Personal and Advertising Injury  
Blanket Contractual Liability  
Products and Completed Operations Liability

State of Minnesota named as an Additional Insured

- (c) **Commercial Automobile Liability Insurance.** Subcontractor is required to maintain insurance protecting the LGU from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Agreement, and in case any work is subcontracted the LGU will require the subcontractor to provide Commercial Automobile Liability. Insurance **minimum** amounts are as follows:

\$2,000,000 -- per occurrence Combined Single limit for Bodily Injury and Property Damage

\*\*For LGUs, the coverage shall be maintained in conformance with the Tort Claims limits set forth in Minn. Stat. Ch. 466, with limits not less than \$500,000 per claimant and \$1,500,000 per occurrence for bodily injury and property damage.

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

- (d) **Professional Liability Insurance.** This policy will provide coverage for all claims the LGU, or its subcontractors, may become legally obligated to pay, resulting from any actual or alleged negligent act, error, or omission related to LGU's or its subcontractors' professional services required under the Agreement.

\$2,000,000 -- per claim or event

\$2,000,000 -- annual aggregate

\*\*For LGUs, the coverage shall be maintained in conformance with the Tort Claims limits set forth in Minn. Stat. Ch. 466, with limits not less than \$500,000 per claimant and \$1,500,000 per occurrence for bodily injury and property damage.

Any deductible of the subcontractor will be the sole responsibility of the subcontractor and may not exceed \$50,000 without the written approval of the State. If the subcontractor desires authority from the State to have a deductible in a higher amount, the subcontractor shall request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements or other approved documentation so that the State can ascertain the ability of the subcontractor to cover the deductible from its own resources.

- (e) The retroactive or prior acts date of such coverage shall not be after the effective date of this Agreement and LGU or subcontractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by LGU or subcontractor to fulfill this requirement.

#### **14.3 Additional insurance conditions:**

- LGU's or subcontractor's policy(ies) or subcontractor's shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of the performance under this Agreement.
- LGU or subcontractor is responsible for payment of Agreement-related insurance premiums and deductibles.

- If LGU or subcontractor is self-insured, a Certificate of Self-Insurance must be attached
- Include legal defense fees in addition to liability policy limits, with the exception of 14. 2 D. above.
- Obtain insurance policies from an insurance company having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota or obtain comparable coverage under a program of self-insurance.
- An Umbrella or Excess Liability insurance policy may be used to supplement the LGU's or subcontractor's policy limits to satisfy the full policy limits required by the Agreement.
- If LGU or subcontractor receives a cancellation notice from an insurance carrier affording coverage herein, LGU agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless LGU's or subcontractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota.

**14.4** The State reserves the right to immediately terminate the Agreement if the LGU or subcontractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the LGU. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

**14.5** The successful responder is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the Agreement.

## **15. Publicity and endorsement**

**15.1 Publicity.** Any publicity regarding the subject matter of this 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 LGU individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.

**15.2 Endorsement.** The LGU must not claim that the State endorses its products or services.

## **16. Governing law, jurisdiction, and venue**

Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. 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.

## **17. Data disclosure**

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the LGU 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 agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the LGU to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

## **18. Payment to subcontractors**

As required by Minn. Stat. § 16A.1245, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

## **19. Termination**

**19.1 Termination by the State.** The State or Commissioner of Administration may cancel this Agreement at any time, with or without cause, upon 30 days' written notice to the LGU. Upon termination, the LGU will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.



**19.2 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 LGU. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the LGU 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 LGU notice of the lack of funding within a reasonable time of the State's receiving that notice.

**20. Minn. Stat. § 181.59**

The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

Every Agreement for or on behalf of the State, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the LGU agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any Agreement, or any subcontract, no LGU, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no LGU, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any Agreement on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this Agreement may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the Agreement, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

**21. E-Verify certification (In accordance with Minn. Stat. § 16C.075)**

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor 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. Contractor 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.