

## STATE OF MINNESOTA GRANT CONTRACT

This grant contract 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 2015, 1<sup>st</sup> Special Session, Chapter 4, Article 3, Section 3, and Subdivision 8, 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 to the satisfaction of the State.

### Grant Contract

#### 1 Term of Grant Contract

##### 1.1 *Effective date:* July 1, 2015

**The Grantee must not begin work under this grant contract until this contract is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.**

##### 1.2 *Expiration date:* June 30, 2017, 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: 8. Liability; 9. State Audits; 11. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 16 Data Disclosure.

#### 2 Grantee's Duties

The Grantee, who is not a state employee, will:

Use the funds provided for the operations of the Duluth Zoo.

Reporting Requirements: Detailed information on the expenditure of grant funds and measurable outcomes as a result of the expenditure of funds will be displayed on Grantee's website by June 30 each year. If Grantee does not have an active web site, they shall report to the Authorized Representative the detailed information on 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 provide quarterly payments to the Grantee as a result of funds collected and made available for this purpose.

4.2 *Total Obligation.* The total obligation of the State for all compensation and reimbursements to the Grantee under this grant agreement will not exceed \$320,000.00.

##### 4.3. *Payment*

(a) *Invoices.* The State will promptly pay the Grantee after the Grantee presents a quarterly invoice in the amount of \$40,000.00. Payment will be made to the Grantee based on the fund balance available for the quarter.

# EXHIBIT A

**(b) Contracting and Bidding Requirements** Per Minn. Stat. §471.345, grantees that are municipalities as defined in Subd. 1 must do the following if contracting funds from this grant contract agreement for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property

**(a)** If the amount of the contract is estimated to exceed \$100,000, a formal notice and bidding process must be conducted in which sealed bids shall be solicited by public notice. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2)

**(b)** If the amount of the contract is estimated to exceed \$25,000 but not \$100,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2) and paragraph (c).

**(c)** If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2)

**(d)** Support documentation of the bidding process utilized to contract services must be included in the grantee's financial records, including support documentation justifying a single/sole source bid; if applicable.

**(e)** For projects that include construction work of \$25,000 or more, prevailing wage rules apply per; Minn. Stat. §§177.41 through 177.44 consequently, the bid request must state the project is subject to *prevailing wage*. 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. A prevailing wage form should accompany these bid submittals.

## 5 Conditions of Payment

All services provided by the Grantee under this grant contract 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 Amanda Sroka, Grants Manager, 500 Lafayette Road, St. Paul, MN 55155-4010, (651) 259-5533 or his/her successor, and has the responsibility to monitor the

# EXHIBIT A

Grantee's performance and the authority to accept the services provided under this grant contract. 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 Kathleen Bergen, Manager, Parks and Recreation, 411 W First St, Duluth, MN 55802, (218) 730-4309, kbergen@duluthmn.gov, or his/her successor. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

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

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

7.2 **Amendments.** Any amendments to this grant contract 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, or their successors in office.

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

7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, 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 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.

## 9 **State Audits**

Under Minn. Stat. 16C.05, subd. 5, 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.

## 10 **Single Audit**

All state and local governments, colleges and universities, and non-profit organizations that expend \$750,000 or more of Federal awards in a fiscal year must have a single audit according to OMB Circular A-133. This is \$750,000 total Federal awards received from all sources. If an audit is completed, forward a copy of the report to both the State's Authorized Representative and the State Auditor.

## 11 **Government Data Practices and Intellectual Property**

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

# EXHIBIT A

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.

## 12 **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.

## 13 **Publicity and Endorsement**

13.1 **Publicity.** Any publicity regarding the subject matter of this grant contract 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.

13.2 **Endorsement.** The Grantee must not claim that the State endorses its products or services.

## 14 **Governing Law, Jurisdiction, and Venue**

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

## 15 **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.

## 16 **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.

## 17 **Invasive Species Prevention**

The DNR requires active steps to prevent or limit the introduction, establishment, and spread of invasive species during contracted work. The contractor shall prevent invasive species from entering into or spreading within a project site by cleaning equipment prior to arriving at the project site.

If the equipment, vehicles, gear, or clothing arrives at the project site with soil, aggregate material, mulch, vegetation (including seeds) or animals, it shall be cleaned by contractor furnished tool or equipment (brush/broom, compressed air or pressure washer) at the staging area. The contractor shall dispose of material cleaned from equipment and clothing at a location determined by the DNR Contract

# EXHIBIT A

Administrator. If the material cannot be disposed of onsite, secure material prior to transport (sealed container, covered truck, or wrap with tarp) and legally dispose of offsite.

The contractor shall ensure that all equipment and clothing used for work in infested waters has been adequately decontaminated for invasive species (ex. zebra mussels) prior to being used in non-infested waters. All equipment and clothing including but not limited to waders, tracked vehicles, barges, boats, turbidity curtain, sheet pile, and pumps that comes in contact with any infested waters must be thoroughly decontaminated.

## 1. STATE ENCUMBRANCE VERIFICATION

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

Signed: Ken Montgomery

Date: 7/14/15

SWIFT Contract/PO No(s). 96571 3-80055

## 2. GRANTEE

The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

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

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

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

## 3. STATE AGENCY

By: \_\_\_\_\_  
(with delegated authority)

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

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

Distribution:

Agency:

Grantee

State's Authorized Representative - Photo Copy

# EXHIBIT A

CITY OF DULUTH

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

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Countersigned:

\_\_\_\_\_  
City Auditor

Approved as to form:

\_\_\_\_\_  
City Attorney