

STATE OF MINNESOTA
PARK LEGACY GRANT AGREEMENT
PL14-002

This grant agreement is between the State of Minnesota, acting through its Commissioner of Natural Resources ("STATE") and the City of Duluth, 411 West 1st Street, Duluth, MN 55802 ("GRANTEE").

Recitals

1. Under Minn. Laws 2013, Chapter 137, Article 3, Section 3, Subd. b, the State has allocated funds to provide grants under Minnesota Statutes, section 85.535, to acquire, develop, improve, and restore parks and trails of regional or statewide significance outside of the metropolitan area, as defined in Minnesota Statutes, section 473.121, subdivision 2.
2. The Grantee has made application to the State for a portion of the allocation for the purpose of conducting the project entitled **Hartley Park**.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant agreement to the satisfaction of the State.

Grant Agreement

1. Term of Grant Agreement

- 1.1. **Effective Date: April 10, 2015.** Per MN Statute 16B.98, Subd. 5 and Subd. 7, this agreement is not valid and no payments will be made to the Grantee until this grant agreement is fully executed, however, eligible expenses may be incurred as of **April 10, 2015**.
- 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 agreement: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue, 15 Data Disclosure and 21 Program Requirements.

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 §16B.97 subd. 4 (a)(1).
- 2.2. Comply with Attachment A, Project Budget, which is incorporated by reference and made a part of this agreement.

The Grantee agrees to complete the project in accordance with the approved budget to the extent practicable and within the project period specified in the grant agreement. Any material change in the scope of the project, budget or completion date shall require prior written approval by the STATE.

3. Time

The Grantee must comply with all the time requirements described in this grant agreement. In the performance of this grant agreement, 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 agreement

as follows:

- 4.1.1. Compensation. The Grantee will be paid for all services performed pursuant to this grant agreement not to exceed **\$600,000**.
- 4.1.2. Matching Requirement: Grantee certifies that the following matching requirement for the Grant will be met by GRANTEE. The total project cost is **\$841,000**. The Grantee must provide nonstate cash match of at least **\$241,000**.
- 4.1.3. The total state obligation for all compensation to grantee shall not exceed: <Six hundred thousand dollars and no cents>.

Funds made available pursuant to this Agreement shall be used only for expenses incurred in performing and accomplishing the purposes and activities specified herein. Notwithstanding all other provisions of this Agreement, it is understood that any reduction or termination of funds allocated to the State may result in a like reduction to the Grantee.

4.2. Payment

The State shall disburse funds to the Grantee pursuant to this Agreement on a reimbursement basis, based upon a payment request and required expenditure documentation submitted by the Grantee and reviewed and approved by the State. The Grantee shall be limited to no more than four payment requests during the period covered by this Agreement. The Grantee shall submit a final billing within 30 days of the end of the project period.

4.3. 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

4.3.1. 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)

4.3.2. 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).

4.3.3. 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)

4.3.4. 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.

4.3.5. 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 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 **Joe Hiller, 500 Lafayette Road, St. Paul, MN 55155-4039, joe.hiller@state.mn.us 651-259-5538**, or his successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant 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 **Kathleen Bergen, Parks and Recreation Manager, City of Duluth, 411 West 1st Street, Duluth, MN 55802, kbergen@duluthmn.gov, (218) 730-4309**. If the Grantee's Authorized Representative changes at any time during this grant agreement, the Grantee must immediately notify the State.

7. Assignment, Amendments, Waiver, and Grant Agreement Complete

- 7.1. **Assignment.** The Grantee shall neither assign nor transfer any rights or obligations under this grant agreement without the prior written consent of the State, approved by the same parties who executed and approved this grant agreement, or their successors in office.
- 7.2. **Amendments.** Any amendments to this grant 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 agreement, or their successors in office.
- 7.3. **Waiver.** If the State fails to enforce any provision of this grant agreement, that failure does not waive the provision or the State's right to enforce it.
- 7.4. **Grant Agreement Complete.** This grant agreement contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant 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 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 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

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

10.2. Intellectual Property Rights (if applicable)

10.2.1. Intellectual Property Rights. 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 agreement. 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, 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

10.2.2.1. 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 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.

- 10.2.2.2. 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. Signage Publicity and Endorsement

- 12.1. **Signage** Any site developed or improved by this grant agreement shall display a sign at a prominent location and in a form approved by the State

12.2. **Publicity.** Any publicity regarding the subject matter of this grant agreement 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 agreement.

- 12.3. **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 agreement. Venue for all legal proceedings out of this grant agreement, or its breach, must be in the appropriate state or federal court

with competent jurisdiction in Ramsey County, Minnesota.

14. Termination

14.1. Termination by the State. The State may immediately terminate this grant 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.

14.2. Termination for Cause. The State may immediately terminate this grant agreement if the State finds that there has been a failure to comply with the provisions of this grant agreement, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

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. Americans with Disabilities Act

The Grantee shall construct, operate, and maintain all facilities and programs in compliance with all state and federal accessibility laws, regulations, and guidelines. Information on compliance with the Americans with Disabilities Act is available at US Access Board.

17. Reporting Requirements

The Grantee shall submit a progress report, in a form prescribed by the State, by January 1 of each year during the term of this grant agreement. A final report must be submitted with the request for final reimbursement. Forms will be provided by the state.

18. Inspections

The State's authorized representatives 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 project completion. Following closure of the project, the State's authorized representatives shall be allowed to conduct post-completion inspections of the site to ensure that the site is being properly operated and maintained and that no conversion of use has occurred.

19. Resource Management and Protection

The Grantee shall protect, manage and maintain, or cause to maintain, the property acquired and/or developed pursuant to this grant agreement. Properties shall be kept reasonably safe for public use, if applicable. All state and federal accessibility laws, regulations and standards shall be adhered to. Vegetation management and similar safeguards and supervision shall be provided to the extent feasible. Buildings, roads, trails and other structures and improvements, if any, shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration.

The Grantee shall keep the facility open to the general public at reasonable hours and at times of the year consistent with the purpose and type of use of the property and appropriate management and protection of natural resources.

20. Invasive Species Prevention

The Grantee shall comply with all provisions of state laws, rules, and permits regarding control of invasive species.

The DNR requires active steps to prevent or limit the introduction, establishment, and spread of invasive species during contracted work. The Grantee and/or 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 Grantee and/or contractor shall dispose of material cleaned from equipment and clothing at a location determined by the Grantee. 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 Grantee 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.

21. Program Requirements

The grantee will comply with the provisions of Attachment B, Park Legacy Grant Program Requirements.

**1. STATE ENCUMBRANCE
VERIFICATION**

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

Signed: Laurie Folke
Date: 1-21-15

SWIFT Contract/PO 88130 / 3-70001

2. GRANTEE

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

By: See next page for City signatures

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

3. STATE AGENCY

By: [Signature]
(with delegated authority)

Title: Deputy Director, DNR Division of Parks and Trails

ACTING

Date: 06/08/2015

Distribution:

Agency

Grantee

State's Authorized Representative - Photo Copy

CITY OF DULUTH

By:


Mayor

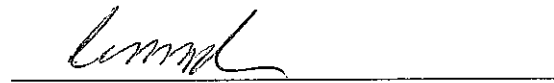
Attest:


City Clerk

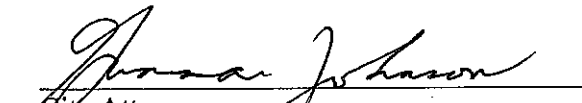
Date

5/18/15

Countersigned:


City Auditor

Approved as to form:


City Attorney

**Attachment A
Project Budget**

Recipient: City of Duluth

Grant: PL14-002 Hartley Park

Grant Amount: \$600,000

Local Match: \$241,000

Total Cost: \$841,000

Project Scope:

Develop trails, roads, natural play, parking, native restoration and interpretive opportunities in 640-acre park.

Notes / Conditions:

<u>Project Components</u>	<u>Estimated Total Cost</u>
Vegetation Managment	\$117,000
Trail Improvement	\$417,000
Parking	\$162,000
Landscaping	\$30,000
Interpretive Signs	\$35,000
D/E (max 10% of \$800,000 total cost)	\$80,000
Total Cost	\$841,000

Attachment B

Park Legacy Grant Program Requirements

Land Retention

Any lands acquired or developed with assistance from the Park Legacy grant program must be retained solely for public outdoor recreation use. The lands subject to this contract are shown in Attachment C – Boundary Map which is attached and made part of this contract. No other use can be made of these lands without prior written approval of the State. The State will consider requests to convert these lands to other uses only if all practical alternatives have been evaluated and rejected on a sound basis and replacement lands of equal or greater fair market value and reasonably equivalent usefulness are acquired and dedicated to public outdoor recreation use.

Deed Restriction

The Grantee shall have the following condition recorded with the deed to all lands within the park as described in Attachment C – Boundary Map and submit an attested copy of the deed and the condition to the State:

In order to comply with the Department of Natural Resources Park Legacy Grant Agreement **PL14-002**, the City of Duluth does hereby impose the following restrictions on the property described in Attachment C to that agreement:

1. The property shall be permanently managed and maintained for public outdoor recreation use.
2. The Grantee shall not at any time convert any portion of the park area to uses other than public outdoor recreation use without the prior written approval of the State acting through its commissioner of natural resources.

Sign Requirement: A recipient of money from the parks and trails fund must display a sign on lands and capital improvements purchased, restored, or protected with money from the parks and trails fund that includes the logo developed by the commissioner of natural resources to identify it as a project funded with money from the vote of the people of Minnesota on November 4, 2008.

Native Restoration: To the extent possible, a person conducting restoration with money appropriated in this section must plant vegetation or sow seed only of ecotypes native to Minnesota, and preferably of the local ecotype, using a high diversity of species originating from as close to the restoration site as possible, and protect existing native prairies from genetic contamination.

Minnesota Historical Sites Act and Minnesota Field Archaeology Act review: The Minnesota Historical Society will be contacted to review your project to determine if the site is a potential location for historical or archeological findings. If the Historical Society determines that a survey is required, the survey would need to be completed prior to any site disturbance for development projects and prior to the final reimbursement of the grant funds for acquisition projects.

Conservation Corps: The Grantee must give consideration to Conservation Corps Minnesota for possible use of the corps' services to contract for restoration and enhancement services. For projects with the potential to need historic preservation services, the Grantee must give consideration to the Northern Bedrock Conservation Corps for possible use of the corps' services.

Solar Photovoltaic Modules: No solar photovoltaic module may be installed unless the solar photovoltaic module is made in Minnesota as defined in Minnesota Statutes, section 216C.411, paragraph (a).

Kathleen Bergen 9/20/14

