

## STATE OF MINNESOTA ENCUMBRANCE WORKSHEET

ORG: 112

SWIFT CONTRACT NO: 133100

TYPE: JPA

PO NUMBER: 3000025710

MDA PREPARER/CONTACT & PHONE NUMBER (INITIAL BY NAME):

Angie Ambourn 651-201-6073

AGENCY: Agriculture	FISCAL YEAR:18	SWIFT VENDOR NUMBER: 197681
TOTAL AMOUNT:\$ 65,000	CATEGORY CODE: 72141504	SWIFT VENDOR LOCATION:5
	ACCOUNT CODE:430001	SWIFT VENDOR ADDRESS:
LAWS OF:		

ACCOUNTING DISTRIBUTION	ACCOUNTING DISTRIBUTION	ACCOUNTING DISTRIBUTION
FISCAL YEAR:18	FISCAL YEAR:19	FISCAL YEAR:
FUND:3000	FUND:3000	FUND:
DEPT ID:B04312TN	DEPT ID: B04312TN	DEPT ID:
APPROP ID:B042F57	APPROP ID: B042F57	APPROP ID:
PC BUS UNIT:B0401	PC BUS UNIT: B0401	PC BUS UNIT:
PROJECT ID:B0418F5712TN	PROJECT ID: B0418F5712TN	PROJECT ID:
ACTIVITY:12TN	ACTIVITY: 12TN	ACTIVITY:
SOURCE:REIMB	SOURCE:REIMB	SOURCE:
AMOUNT: \$ 32,500	AMOUNT:\$32,500	AMOUNT:

NEEDED FOR FEDERAL GRANTS

CONTRACT START DATE March 1, 2017

CONTRACT END DATE December 31, 2018

CONTRACT NAME & ADDRESS City of Duluth  
411 West 1<sup>st</sup> Street  
Duluth, MN 55802

F&B ONLY BELOW THIS LINE

CHECKLIST: BUDGET CHECKED FAIL: \_\_\_\_\_ PASS: \_\_\_\_\_

OK TO DISPATCH NO: \_\_\_\_\_ YES: \_\_\_\_\_

P/T OVER \$25,000 EVALUATION  
PRINTED FOR FILE

DATE: \_\_\_\_\_ INITIAL: \_\_\_\_\_

NOTES:

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OK TO CLOSE: DATE: \_\_\_\_\_ INITIAL: \_\_\_\_\_ DATE: \_\_\_\_\_ INITIAL: \_\_\_\_\_

## STATE OF MINNESOTA JOINT POWERS AGREEMENT

This agreement is between the State of Minnesota acting through its Commissioner of Agriculture hereinafter referred to as "The Recipient" and City of Duluth, DUNS number 077627883, hereinafter referred to as "The Subrecipient". Project Title: Emerald Ash Borer Treatments in the City of Duluth.

### Recitals

Under Minnesota Statute § 471.59, subdivision 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of implementing activities to suppress EAB populations in the City of Duluth in order to slow the spread of EAB from the city into surrounding areas. The USDA Forest Service Northeastern Area State and Private Forestry has awarded a domestic grant and FAIN number 17-DG-11420004-275 with federal award date signed September 12, 2017 to the Minnesota Department of Agriculture in the amount of \$70,000 made under the authority of Cooperative Forestry Assistance Act of 1978, Public Law 95-313: Food Agriculture, Conservation and Trade Act of 1990, as amended, Public Law 101-624; current year appropriations act dated August 11, 2017 with funding to reimburse the subrecipient up to \$65,000 with cost matching of up to \$65,000. The Catalog of Federal Domestic Assistance (CDFA) number and name are 10.680 (Forest Health Protection). Activities will consist of removal of emerald ash borer infested trees as well as treatment in infested areas. The authority requires a match of 50/50.

### Agreement

#### 1 Term of Agreement

- 1.1 **Effective date:** March 1, 2017 or the date the recipient obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** December 31, 2018, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

#### 2 Agreement between the Parties

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3 Payment

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

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

- Quarter end December 31, 2017 due January 15, 2018
- Quarter end March 31, 2018 due April 15, 2018
- Quarter end June 30, 2018 due July 15, 2018
- Quarter end September 30, 2018 due October 15, 2018
- Quarter end December 31, 2018 Final submission due January 31, 2018

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

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

All services provided by the subrecipient under this agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal,

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

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

Minnesota Department of Agriculture  
Accounts Payable  
625 Robert Street North  
St. Paul, MN 55115

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

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

#### 4 Authorized Representatives

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

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

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

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

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

5.1 **Assignment.** The subrecipient may neither assign nor transfer any rights or obligations under this agreement without the prior consent of the recipient and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.

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

5.3 **Waiver.** If the recipient fails to enforce any provision of this agreement, that failure does not waive the provision or its right to enforce it.

5.4 **Contract Complete.** This agreement contains all negotiations and agreements between the recipient and the subrecipient. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

#### 6 Liability

The recipient and the sub recipient agree that, except as otherwise expressly provided, each party shall be responsible for its own acts and omissions and the results thereof to the extent authorized by law. The liability of the governmental unit is governed by the provisions of Minn. Stat. Chapter 466 and other applicable law. Minn. Stat. §3.736 and other applicable law govern the State's liability. This clause shall not be construed to bar any legal remedies the State or the governmental unit may have for the other's failure to fulfill its obligations under this Agreement.

Nothing in this Agreement is intended to be construed to limit either party from asserting against third parties any defenses or immunities (including common law, statutory, and constitutional) it may have or be construed to create a

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basis for a claim or suit when none would otherwise exist.

**7 State Audits**

Under Minnesota Statute § 16C.05, subdivision 5, the Governmental Unit'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.

**8 Government Data Practices**

The recipient and subrecipient must comply with the Minnesota Government Data Practices Act, Minnesota Statute Ch. 13, 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 subrecipient under this agreement. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data referred to in this clause by either the subrecipient or the recipient.

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

**9 Venue**

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

**10. Duplication, Displacement, Supplanting**

MDA certifies that assignment of CCM personnel will not result in:

- 10.1.1 Duplication of an activity otherwise available in the locality of the program.
- 10.1.2 Displacement of currently employed workers or workers on seasonal layoff or layoff from a substantially equivalent position, including partial displacement such as reduction in hours of non-overtime work, wages, or other employment benefits.
- 10.1.3 Termination or layoff of employees.
- 10.1.4 Infringement on the promotional opportunity of an employee or infringement on services performed by an employee as part of the employee's assigned duties.
- 10.1.5 Supplanting the hiring of employed workers.
- 10.1.6 Infringement on the assignments of any presently employed worker; an employee who recently resigned or was discharged; an employee who is on leave, on strike, being locked out, subject to a reduction in force, or has recall rights subject to a collective bargaining agreement or applicable personnel procedure.

**10 Termination**

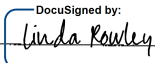
10.1 **Termination.** The recipient or the subrecipient may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

10.2 **Termination for Insufficient Funding.** The recipient 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 subrecipient. The recipient is not obligated to pay for any services that are provided after notice and effective date of termination. However, the subrecipient will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The recipient 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 recipient must provide the subrecipient notice of the lack of funding within a reasonable time of the recipient receiving that notice.

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**1. STATE ENCUMBRANCE VERIFICATION**

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

Signed:  \_\_\_\_\_  
Date: 10-09-17

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**2. GOVERNMENTAL UNIT/SUBRECIPEINT**

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

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

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

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

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

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

**3. STATE AGENCY/RECIPIENT**

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

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

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

**4. COMMISSIONER OF ADMINISTRATION**

As delegated to Materials Management Division

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

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

Distribution:  
Agency  
Governmental Unit  
State's Authorized Representative - Photo Copy

CITY OF DULUTH

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

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

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

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

Countersigned:

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

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

Approved as to form:

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

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