

STATE OF MINNESOTA
GRANT CONTRACT AGREEMENT

SC #: 210955

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
BUSINESS AND COMMUNITY DEVELOPMENT DIVISION

Redevelopment Grant Contract Agreement

**Grant No: RDGP-22-0001-o-FY22
Historic Duluth Armory Project**

This grant contract agreement is between the State of Minnesota, acting through the Department of Employment and Economic Development, Business and Community Development Division (State), and the Duluth Economic Development Authority (Grantee).

Recitals

1. Under Minn. Stat. § 116J.571 the State is empowered to enter into this grant.
2. The State is in need of programs to do the following: create new jobs, increase the tax base and provide other public benefits by redeveloping underused or unproductive sites.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract agreement to the satisfaction of the State.

Grant Contract Agreement

1 Term of Grant Contract Agreement

- 1.1 **Effective date:** April 1, 2022, or the date the State obtains all required signatures under Minn. Stat. § 16B.98, Subd. 5, whichever is later. Per Minn. Stat. § 16B.98, Subd. 7, no payments will be made to the Grantee until this grant contract agreement is fully executed. **The Grantee must not begin work under this grant contract agreement 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, 2025, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract agreement: 8. Liability; 9. Accounting; 10. Government Data Practices; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; 15. Grant Repayment; 16. Data Disclosure; 17. Reporting; 18. Conflict of Interest; and 19. Minnesota Business Subsidy Law.

2 Grantee's Duties

- 2.1 **Duties, Deliverables, and Completion Dates.** The Grantee, who is not a state employee, will perform the following duties and provide the deliverables as outlined below.
 - (a) Administer these grant funds in accordance with Minn. Stat. §§ 116J.551 – 559 and the application submitted on February 1, 2022 for funding for the Historic Duluth Armory Project, which is incorporated into this grant contract agreement and the provisions of this grant contract agreement. Any modification made to the approved application must be approved by the State.

- (b) Promptly notify the State of any proposed material change in the scope of the project as submitted in the grant application, budget as defined in Section 4.1(a) below, or entire project's completion date, which must be approved by the State, prior to implementation.
- (c) Provide evidence to the State prior to the closeout of the grant that the Redevelopment activities have been completed.
- (d) It is expected that the site will be redeveloped as proposed in the grant application and upon which funding was based. Any material change in the development plans for the site must be presented to the State and approved.
- (e) Adhere to all other requirements of this grant contract agreement.

2.2 **Provisions for Contracts and Sub-grants.**

- (a) **Contract Provisions.** The Grantee must include in any contract and sub-grant, in addition to provisions that define a sound and complete agreement, such provisions that require contractors and sub-grantees to comply with applicable state and federal laws. Along with such provisions, the Grantee must require that contractors performing work covered by this grant be in compliance with all applicable OSHA regulations.
- (b) **Ineligible Use of Grant Funds.** The dollars awarded under this grant contract agreement are grant funds and shall only be used by Grantee or awarded by Grantee to third parties as grant funds and cannot take the form of a loan under any circumstance. Grantee shall not use, treat, or convert the grant funds into an interest bearing loan, a non-interest bearing loan, a deferred loan, a forgivable deferred loan or any other type of loan. Further, Grantee shall include in any contract or sub-grant awarding the grant funds to a third party all the provisions and requirements of this grant contract agreement, including the requirement that these dollars are grant funds only and cannot be used, treated or converted into any type of loan.
- (c) **Job Listing Agreements.** Minn. Stat. § 116L.66, subd.1, requires a business or private enterprise to list any vacant or new positions with the state workforce center if it receives \$200,000 or more a year in grants from the State. If applicable, the business or private enterprise shall list any job vacancy in its personnel complement with MinnesotaWorks.net at www.minnesotaworks.net as soon as it occurs.
- (d) **Payment of Contractors and Subcontractors.** The Grantee must ensure that all contractors and subcontractors performing work covered by this grant are paid for their work that is satisfactorily completed.

3 **Time**

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

4 **Consideration and Payment**

4.1 **Consideration.** State will pay the Grantee under this grant contract agreement as follows:

(a) **Redevelopment Costs.** The following table represents the total Redevelopment Costs.

Activities	Amount
Abatement (Armory Building)	\$1,263,290.00
Abatement and Demolition (Annex Building)	\$82,546.00
TOTAL	\$1,345,836.00

(b) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract agreement will not exceed \$672,918.00. In accordance with Minn. Stat. § 116J.575, subd. 1, the grant may pay for up to 50 percent of the eligible costs for a qualifying site. This requires a local match of at least 50 percent. For the purpose of this project, based on the budget above, the local match portion is at least \$672,918.00, which may come from any other money available to the municipality.

4.2. **Payment**

(a) **Invoices.** The State will disburse funds to the Grantee pursuant to this Contract, based upon payment requests submitted by the Grantee and reviewed and approved by the State. Payment requests must be accompanied by supporting invoices that relate to the activities in the approved budget. The amount of grant funds requested by the Grantee cannot exceed fifty percent (50%) of the total approved Redevelopment costs incurred by the Grantee as supported by invoices. The State will provide payment request forms. Every effort should be made to submit invoices within the same fiscal year the costs were incurred. In order to ensure that all funds are drawn prior to the expiration date of the grant, all payment requests must be received at least 30 days prior to the grant-term expiration date.

(b) **Eligible Costs.** Eligible costs include the costs identified in the Section 4.1(a) of this Contract. The Grantee may not use these funds to provide loans to other entities or for administrative costs associated with managing the project this grant is funding.

(c) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract agreement are considered administrative in nature and not permitted. This does not include costs for contractors to complete the activities listed in Section 4.1(a), which may be considered eligible at the discretion of the State.

(d) **Program Income.** Program income generated from grant-funded activities on hand at the end of the grant period must be returned to the State unless the State has approved a re-use of the income.

4.3 **Contracting and Bidding Requirements.** Grantees that are municipalities must comply with Minn. Stat. § 471.345 if they are 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. The Grantee must not contract with vendors who are suspended or debarred in Minnesota: <http://www.mmd.admin.state.mn.us/debarredreport.asp>

5 **Conditions of Payment**

All services provided by the Grantee under this grant contract agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 **Authorized Representative**

The State's Authorized Representative is Erin Welle, DEED, First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101, 651-259-7453, erin.welle@state.mn.us, or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is Emily Nygren, Duluth Economic Development Authority, 411 West First Street, Room 418, Duluth, MN 55802, 218-730-5323, enygren@duluthmn.gov. If the Grantee's Authorized Representative changes at any time during this grant contract agreement, the Grantee must immediately notify the State.

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

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

7.2 **Amendments and Adjustments.**

(a) **Amendments.** Any amendments to this grant contract agreement, with the exception of Grant Adjustment Notices (GANs), must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract agreement, or their successors in office.

(b) **Grant Adjustment Notices (GANs).** GANs must be approved by the State in writing, and require a written change request by the Grantee. A GAN may be used for the purposes of transferring budget amounts between line items that do not change the awarded value, or other grant status activity. All other changes require a formal amendment as stated in paragraph 7.2(a).

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

7.4 **Grant Contract Complete.** This grant contract agreement contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract agreement, whether written or oral, may be used to bind either party.

8 **Liability**

Subject to the provisions and limitations of Minn. Stat. § 466, the Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract agreement by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract agreement.

9 **Accounting**

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 contract 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 contract 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.

The Grantee shall maintain adequate financial records consistent with generally accepted accounting principles. The Grantee shall submit accounting system records that track the use of grant proceeds and all matching funds by eligible Redevelopment Costs for each year in which grant disbursement and expenditures were made. The records shall reflect both expenditures and revenues and shall be submitted after all grant proceeds and matching funds have been expended or at the State's request.

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 contract agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

10.2 *Intellectual Property Representations*. The Grantee represents and warrants that Grantee's intellectual property used in the performance of this Contract does 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 Grantee's intellectual property used in the performance of this Contract 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 intellectual property as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11 Workers' Compensation

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12 Publicity and Endorsement

12.1 *Publicity*. Any publicity regarding the subject matter of this grant contract agreement must identify the State as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract agreement. For DEED logos and formatting, please contact Laura Winge at 651-259-7173 or laura.winge@state.mn.us.

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

13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract agreement. Venue for all legal proceedings out of this grant contract agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

14.1 ***Termination by the State.*** The State may immediately terminate this grant contract agreement with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 ***Termination for Cause.*** The State may immediately terminate this grant contract agreement if the State finds that there has been a failure to comply with the provisions of this grant contract 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. To validate that reasonable progress has been made, a Payment Request, as outlined in Section 4.2 must be submitted to the State before June 30, 2023, or the State's obligation to fund the Grant may be terminated. Invoices must be for eligible costs incurred after the grant contract agreement is fully executed. 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.

14.3 ***Termination for Insufficient Funding.*** The State may immediately terminate this grant contract agreement if:

(a) It does not obtain funding from the Minnesota Legislature; or,

(b) 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 Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee 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 contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15 Grant Repayment

If a project fails to substantially provide the public benefits listed in the grant application within five years from the date of the grant award, the commissioner may require that 100 percent of the grant amount be repaid by the development authority over a term not to exceed ten years. The commissioner may exercise discretion to require repayment of only a portion of the grant amount taking into account the public benefits generated by the completed development.

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.

Other Provisions

17 Reporting

Grantee must submit to the State annual reports on the use of funds and the progress of the Project covering July 1st through June 30th of each year. The reports must be received by the State no later than July 25th of each year. The reports must identify specific Project goals listed in the application and quantitatively and qualitatively measure the progress of such goals. Grant payments shall not be made on grants, or subsequent grant awards made to the grantee, with past due progress reports. In addition, the Grantee shall submit a final report. The State will provide reporting forms.

18 Conflict of Interest

The State will take steps to prevent individual and organizational conflicts of interest in reference to Grantees per Minn. Stat. § 16B.98 and Department of Administration, Office of Grants Management, Policy Number 08-01 Conflict of Interest Policy for State Grant-Making. When a conflict of interest concerning State grant-making is suspected, disclosed, or discovered, transparency shall be the guiding principle in addressing it.

In cases where a potential or actual individual or organizational conflict of interest is suspected, disclosed, or discovered by the Grantee throughout the life of the grant contract agreement, they must immediately notify the State for appropriate action steps to be taken, as defined above.

19 Minnesota Business Subsidy Law

The Grantee must comply, if appropriate, with the Minnesota Business Subsidy Law, Minn. Stat. §§ 116J.993 – 116J.995.

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1. STATE ENCUMBRANCE VERIFICATION

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

Signed: **Ka Vue** Digitally signed by Ka Vue
Date: 2022.04.20 11:18:46
-05'00' _____

Date: 4/20/22 _____

SWIFT Contract/PO No(s). 210955 PR 68559 PO 3000467673

2. GRANTEE

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

By: _____

Title: DEDA President

Date: _____

By: _____

Title: DEDA Secretary

Date: _____

Grantee: Duluth Economic Development Authority
Grant Name: Historic Duluth Armory
Grant Number: RDGP-22-0001-o-FY22

3. STATE AGENCY

By: _____
(with delegated authority)

Title: Deputy Commissioner

Date: _____

Distribution:
Agency
Grantee
State's Authorized Representative - Photo Copy