

# STATE OF MINNESOTA GRANT CONTRACT

This grant contract is between the State of Minnesota, acting through its Commissioner of Natural Resources ("STATE") and City of Shakopee, 485 Gorman Street, Shakopee, MN 55379 ("GRANTEE").

## Recitals

1. Under Minn. Laws 2019, 1st Special Session, Chapter 4, Article 2, Section 2, Subd. 9b, the State has allocated funds for grants for parks and trails of regional significance outside of the seven county metropolitan area under Minnesota Statutes, section 85.535.
2. The Grantee has made application to the State for a portion of the allocation for the purpose of conducting the project entitled Ridge Creek Park.
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. Pursuant to [Minn.Stat.16B.98](#), Subd.1, the Grantee agrees to minimize administrative costs as a condition of this grant.

## Grant Contract

### 1 Term of Grant Contract

#### 1.1 *Effective date:*

July 1, 2019, Per Minn. Stat. 16B.98, Subd. 5 and Subd. 7, this contract is not valid and no payments will be made to the Grantee until this grant contract is fully executed, however, eligible expenses may be incurred as of July 1, 2019.

#### 1.2 *Expiration date:*

June 30, 2021, 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; 10. Government Data Practices and Intellectual Property Rights; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue, 15. Data Disclosure, 20. Resource Management and Protection and 24. Land Retention and Deed Restriction.

### 2 Grantee's Duties

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

Comply with required grants management policies and procedures set forth through Minn. Stat.16B.97 Subd. 4 (a) (1) and comply with Attachment A, Project Budget, which is incorporated and made a part of this contract.

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 contract. 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 contract. In the performance of this grant contract, 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 contract as follows:

#### (a) *Compensation*

The Grantee will be paid for all services performed pursuant to this grant contract not to exceed \$250,000.00.

**(b) Matching Requirement:**

Grantee certifies that the following matching requirement for the Grant will be met by Grantee. The total project cost is \$500,000.00. The Grantee agrees to provide a nonstate cash match of a least \$250,000.00.

**(c) Total Obligation.**

The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$250,000.00. Funds made available pursuant to this contract shall be used only for expenses incurred in performing and accomplishing the purposes and activities specified herein. Notwithstanding all other provisions of this contract, 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 contract 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 contract.

**4.3 Contracting and Bidding Requirements**

Per [Minn. Stat. 471.345](#), grantees that are municipalities as defined in Subd. 1 must follow the Uniform Municipal Contracting law.

For projects that include construction work of \$25,000 or more, prevailing wage rules apply per [Minn. Stat. 177.41](#) through [177.44](#). 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.

**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 laws.

**6 Authorized Representative**

The State's Authorized Representative is Mai Neng Moua, Grant Specialist Coordinator, MNDNR, 500 Lafayette Road, St. Paul, MN 55155, (651) 259-5638, [mai.n.moua@state.mn.us](mailto:mai.n.moua@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. 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 Joy Sutton, Grants and Special Projects Coordinator, City of Shakopee, 485 Gorman Street, Shakopee, MN 55379, (952) 233-9321, [jsutton@ShakopeeMN.gov](mailto:jsutton@ShakopeeMN.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. 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 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, 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 Rights**

### 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, 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 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 Rights**

- (A) *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 contract*. 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.

**(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 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.

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 Publicity and Endorsement**

### **12.1 *Signage***

Any site funded by this grant contract shall display a sign at a prominent location at the entrance to the site and in a form approved by the State that acknowledges funding through this grant.

### **12.2 *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. All projects primarily funded by state grant appropriation must publicly credit the State of Minnesota, including on the grantee's website when practicable.

### **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 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.

### **14 Termination**

#### **14.1 *Termination by the State***

The State may immediately terminate this grant contract 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 if the State finds that there has been a failure to comply with the provisions of this grant contract, 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, 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 Affirmative Action and Non-Discrimination**

- (a) The grantee agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status in regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age in regard to any position for which the employee or applicant for employment is qualified ([Minn. Stat. 363A.02](#)). The grantee agrees to take affirmative steps to employ, advance in employment, upgrade, train, and recruit minority persons, women, and persons with disabilities.
- (b) The grantee must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The grantee agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship, (Minnesota Rules, part [5000.3500](#)).
- (c) The grantee agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

### **17 Americans with Disabilities Act and Final Guidelines for Outdoor Developed Areas**

The Grantee shall construct, operate, and maintain all facilities and programs in compliance with all state and federal accessibility laws, regulations, and guidelines including the [Final Guidelines for Outdoor Developed Areas](#). Information on compliance with the Americans with Disabilities Act is available at [U.S. Access Board](#).



## **18 Reporting**

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 contract. A final report must be submitted with the request for final reimbursement. Forms will be provided by the State.

## **19 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 contract, 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.

## **20 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 contract. 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.

## **21 Invasive Species Prevention**

Grantees and subcontractors must follow Minnesota DNR's Operational Order 113, which requires preventing or limiting the introduction, establishment and spread of invasive species during activities on public waters and DNR-administered lands. This applies to all activities performed on all lands under this grant agreement and is not limited to lands under DNR control or public waters. [Operational Order 113](#) is incorporated into this contract by reference. Duties are listed in Op Order 113 under Sections II and III (p. 5-8). The grantee shall prevent invasive species from entering into or spreading within a project site by cleaning equipment and clothing prior to arriving at the project site.

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

## **22 Conflict of Interest**

It is the policy of the State to work to deliberately avoid actual, potential and perceived conflict of interests related to grant making at both the individual and organizational levels.

A conflict of interest (actual, potential, or perceived) occurs when a person has actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A conflict of interest exists even if no unethical, improper, or illegal act results from it.

The Grantee, by signing this contract with the State, certifies it has read and understands the Office of Grants Management [Conflict of Interest Policy 08-01](#), will maintain an adequate Conflict of Interest Policy and, throughout the term of the contract, monitor and report any actual, potential, or perceived conflicts of interest to the State's Authorized Representative.

## **23 Minnesota Historical Sites Act and Minnesota Field Archaeology Act**

For projects involving land acquisition and/or construction, the State Historic Preservation Office must review the project to determine if the site is a potential location for historical or archeological findings. If the State Historic Preservation Office 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.

## **24 Land Retention and Deed Restriction**

### **24.1 Land Retention**

All land within the project boundary must be retained and operated for outdoor recreation in perpetuity and a condition of this requirement must be recorded with the deed using language provided in the grant contract. This boundary must include all contiguous lands currently owned by the applicant and managed for public recreation and any additional land to be acquired with this grant.

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.

### **24.2 Deed Restriction**

The Grantee shall have the following condition recorded with the deed to all lands within the park as described in Attachment B – Recreational Site Plan, incorporated in this contract, and submit an attested copy of the deed and the condition to the State:

In order to comply with the Department of Natural Resources Outdoor Recreation Project Contract OR20-010, the City of Shakopee does hereby impose the following restrictions on the property described in Attachment B to that contract:

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.

## **25 Conservation Corps Minnesota**

The Grantee must give consideration to contracting with Conservation Corps Minnesota for contract restoration and enhancement services.

## **26 Pollinator Best Management Practices**

Habitat restorations and enhancements conducted on DNR lands and prairie restorations on state lands or on any lands using state funds are subject to pollinator best management practices and habitat restoration guidelines pursuant to [Minn. Stat. 84.973](#). Practices and guidelines ensure an appropriate diversity of native species to provide habitat for pollinators through the growing season. Current specific practices and guidelines to be followed for contract and grant work can be found here: [Link to December 2014 version](#).

**27 Purchasing Recycled and Recyclable Materials**

The Grantee must use this funding in compliance with Minnesota Statutes, section 16C.0725, regarding purchasing recycled, repairable, and durable materials and Minnesota Statutes, section 16C.073, regarding purchasing and using paper stock and printing.

**28 Energy Conservation and Sustainable Building Guidelines**

The Grantee must ensure that the project complies with the applicable energy conservation and sustainable building guidelines and standards contained in law, including Minnesota Statutes, sections 16B.325, 216C.19, and 216C.20, and rules adopted under those sections. The recipient may use the energy planning, advocacy, and State Energy Office units of the Department of Commerce to obtain information and technical assistance on energy conservation and alternative-energy development relating to planning and constructing the capital improvement project.

**29 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 the new OMB Uniform Guidance: Cost Principles, Audit, and Administrative Awards Requirements for Federal Awards. 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.



**1. STATE ENCUMBRANCE VERIFICATION**

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

Signed: Karen Potvin

Date: 7-19-19

SWIFT Contract/PO No(s): 3-157098

**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: \_\_\_\_\_

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

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

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

**3. STATE AGENCY**

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

(with delegated authority)

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

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

**Distribution:**

Agency

Grantee

State's Authorized Representative