

**STATE OF MINNESOTA
GRANT CONTRACT**

SC #: 172313

**DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
BUSINESS AND COMMUNITY DEVELOPMENT DIVISION**

Contamination Cleanup Grant Contract

**Grant No: CCGP-19-0028-Z-FY20
Riverfront Bluff Project**

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

Recitals

1. Under Minn. Stat. § 116J.554 the State is empowered to enter into this grant.
2. The State is in need of programs to do the following: reduce the potential threat of harmful contaminants to the public's health and the environment; to create new jobs and increase the tax base; and provide other public benefits by redeveloping polluted and unproductive sites.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State.

Grant Contract

1 Term of Grant Contract

- 1.1 ***Effective date.*** January 7, 2020, or the date the State obtains all required signatures under Minn. Stat. § 16B.98, subd. 5, whichever is later. Pursuant to Minn. Stat. § 16B.98, subd. 7, no payments will be made to the Grantee until this grant contract is fully executed.
- 1.2 ***Expiration date.*** December 31, 2022, 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. Accounting; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; 15. Data Disclosure; 16. Reporting; 18. Conflict of Interest; 19. Minnesota Business Subsidy Law; and 20. State and Federal Environmental Standards.

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 – 116J.559 and the application submitted on November 1, 2019 for funding for the Riverfront Bluff Project, which is incorporated into this grant agreement and the provisions of this grant 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 cleanup and/or investigation has been completed and approved by the Minnesota Pollution Control Agency.
- (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 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, especially the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).
- (b) ***Ineligible Use of Grant Funds.*** The dollars awarded under this grant 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 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. 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 as follows:

(a) Project Costs. The following table represents the total Project Costs.

Activities	Amount
Investigation and RAP Development	\$23,600
Contaminated Soil Excavation, Transport, and Disposal	\$737,425
Clean Fill Import, Placement, and Compaction	\$112,000
RAP Implementation, Oversight, and Reporting	\$52,600
TOTAL	\$925,625

(b) Total Obligation. The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$332,732.

In accordance with Minn. Stat. § 116J.554, subd. 1, the grant may pay for up to 75 percent of the project costs for a qualifying site. This requires a local match of at least 25 percent. For the purpose of this project, the local match portion is \$592,893. Of the total match requirement, 12 percent of the cleanup costs as defined in Minn. Stat. § 116J.552, subd. 2 must come from the municipality's general fund, a property tax levy for that purpose, or other unrestricted money available to the municipality. The rest of the local match may be paid with tax increments, regional, state, or federal money available for the redevelopment of brownfields or any other money available to the municipality.

(c) Travel Expenses. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract 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.

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 seventy five percent (75%) of the total approved project costs incurred by the Grantee as supported by invoices. The State will provide payment request forms.

Invoices may be submitted on a monthly basis; however, at a minimum, an invoice for an award shall be submitted by the grantee for expenses incurred 25 days after the end date of the state fiscal year of June 30th. 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 that are incurred during the contract period. 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. Pursuant to Minn. Stat. § 116J.552, subd. 2, costs of implementing the response action plan (RAP) incurred before the grant award date may be eligible at the discretion of the State, if the costs were completed after the RAP was approved by the Minnesota Pollution Control Agency and the RAP was approved within 180 days of the application deadline. Costs incurred for the development of

a RAP incurred prior to grant award may be considered eligible at the discretion of the State. Any reimbursement made for services provided prior to the effective date of the grant will be governed by the terms of the grant.

(c) **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 agreement for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair, or maintenance of real or personal property.

5 **Conditions of Payment**

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

6 **Authorized Representative**

The State's Authorized Representative is Ryan Bloomberg, Grants Specialist, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, 651-259-7452, ryan.bloomberg@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 Michael Kerski, Director of Planning and Development, 485 Gorman Street, Shakopee, MN 55379, 952-233-9346, mkerski@shakopeemn.gov. 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.**

(a) **Amendments.** Any amendments to this grant contract, 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, 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 contract 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, 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

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 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 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 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.

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 Project 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, 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 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 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. 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. 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. To validate that reasonable progress has been made, a Payment Request, as outlined in Section 4.2 must be submitted to the State before September 30, 2020 or such a later date requested by the Grantee and approved by the State, or the State's obligation to fund the Grant may be terminated. These invoices must be for eligible cleanup costs and does not include investigation costs incurred prior to the grant award. 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 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 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

16 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.

17 Debarment and Suspension Certification

If applicable, the Grantee agrees to follow the President's Executive Order 12549 and the implementing regulation "Non-procurement Debarment and Suspension: Notice and Final Rule and Interim Final Rule," found at 53 FR 19189, May 26, 1988, as amended at 60 FR 33041, June 26, 1995, including Appendix B, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions;" unless excluded by law or regulation.

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 perceived, potential, or actual individual or organizational conflict of interest is suspected, disclosed, or discovered by the Grantee throughout the life of the grant 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.

20 State and Federal Environmental Standards

The Grantee must provide evidence that work performed under this grant complies with state and federal environmental standards. An approval from the Minnesota Pollution Control Agency or other appropriate state or federal agency is required upon completion of the cleanup activities.

The State and Grantee acknowledge their assent to this agreement and agree to be bound by its terms through their signatures entered below.

GRANTEE: I have read and I agree to all of the above provisions of this agreement and certify that the appropriate person(s) have executed the contract on behalf of the Grantee.

By _____
(Name)

Mayor _____

Date _____

And

By _____
(Name)

Clerk _____

Date _____

STATE OF MINNESOTA by and through the Department of Employment and Economic Development

By _____
Deputy Commissioner

Date _____

ENCUMBERED:

Department of Employment and Economic Development

By Robin Culbertson
(Name)

Date Encumbered 02/05/2020

(Individual signing certified that funds have been encumbered as required by Minnesota Statutes 16A.15 and 16C.05)

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