



520 Lafayette Road North  
St. Paul, MN 55155-4194

# Sample Grant Agreement

State of Minnesota

Doc Type: Contract

This grant agreement is between the state of Minnesota, acting through its Commissioner of the **Minnesota Pollution Control Agency**, 520 Lafayette Road North, St. Paul, MN 55155-4194 ("MPCA" or "State") and **[GIVE THE FULL NAME OF THE GRANTEE INCLUDING ITS ADDRESS]** ("Grantee").

## Recitals

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1. Under Minn. Stat. § 116.03, subd.2, and pursuant to Minn. Stat. § 115A.0716, and Minn. R. 9210.0800 - 9210.0855, the State is empowered to enter into this grant.
2. Grantee applied to the Minnesota Pollution Control Agency (MPCA) for an Environmental Assistance grant to implement its proposed project: **PROJECT TITLE**.
3. Grantee will comply with required grants management policies and procedures set forth through [Minn.Stat.§16B.97](#), subd. 4 (a) (1).
4. 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. Pursuant to [Minn.Stat.§16B.98](#), subd.1, the Grantee agrees to minimize administrative costs as a condition of this grant.

## Grant Agreement

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### 1. Term of Grant Agreement

- 1.1 **Effective Date.** **[SPELL OUT FULL DATE (e.g., August 1, 2014)]**, 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 agreement is fully executed. **The Grantee must not begin work under this grant agreement until this agreement is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.**
- 1.2 **Expiration Date.** **[SPELL OUT FULL DATE (e.g., August 1, 2014)]**, 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: Liability; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure.

### 2. Grantee's Duties

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

Perform the duties specified in **Attachment\_\_** which is attached and incorporated into this grant agreement.

**[ATTACHMENT MUST CONTAIN PRECISE DUTIES AND DELIVERABLES. IF REPORTING REQUIREMENTS ARE NOT LISTED IN THE ATTACHMENT, ADD REPORTING CLAUSE TO THE GRANT AGREEMENT.]**

### 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:

- (a) **Compensation.** The Grantee will be paid according to the breakdown of costs contained in **Attachment\_\_**, which is attached and incorporated into this grant agreement. **[GRANTEE MATCHING REQUIREMENTS WILL BE ADDED HERE.]**

**(b) Grantee Commitment to Financing.** Grantee shall ensure that sufficient funding is available to the project to assure its satisfactory completion. Grantee shall not reduce the monetary amount it has committed to the project through its own or other funds without written consent of the MPCA.

Grantee shall bear the sole responsibility for cost overruns in completing this project.

**(c) Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant agreement will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the Commissioner of Minnesota Management and Budget (MMB). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

**(d) Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant agreement will not exceed \$[THIS MUST BE THE TOTAL OF 4.1(A) AND 4.1(B) ABOVE].

#### 4.2. **Payment**

The MPCA advances payments on all Environmental Assistance projects. The justification for making advance payment is as follows: The MPCA uses a stringent, competitive review process to determine which projects to fund; this process ensures that there will be no substantial losses to the State. The agency has had a long standing tradition of advancing payments to Grantees, within Legislative Auditor oversight; and the MPCA reserves a minimum of ten (10) percent of the total grant (for awards greater than \$25,000), and does not release those funds until the Grantee submits a final report. Advance payments ensure that projects can begin immediately upon grant contract execution, therefore increasing the amount of time the Grantee has for successful completion of project objectives. Advance payments reduce the financial burden a Grantee might suffer waiting for the State to process reimbursements. A rigorous, agency-wide review process and a practice of making advance payments enable the MPCA to make the most efficient use of its administrative resources.

**(a) Disbursements.** The MPCA shall reimburse the Grantee for only those expenditures incurred during the term of this grant agreement or at the time of the MPCA approval of the final project report, whichever occurs first. No funds shall be disbursed by the MPCA in the absence of adequate documentation as determined by the MPCA. Grant funds shall be disbursed as follows:

1. The MPCA shall disburse **ENTER (##) percent** of the grant funds within thirty (30) days after the MPCA approves evidence of matching funds; and
2. To be eligible for the second disbursement, the Grantee must submit an Interim Report. The MPCA shall disburse up to an additional **ENTER (##) percent** of the grant funds within thirty (30) days after the MPCA approves the Interim Report; and
3. To be eligible for final disbursement, the Grantee must submit a Final Report and an Executive Project Summary. The MPCA shall disburse the final **ENTER (##) percent** of the funds within thirty (30) days after the MPCA approves the Final Report and Executive Project Summary.

**(b)** Disbursements shall not be construed as a waiver by the State of any authority it may have to remedy Grantee's noncompliance with this agreement.

**(c)** The Grantee must promptly return to the State any unexpended funds that have not been accounted for annually in a financial report to the State due at grant closeout.

#### 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 and MPCA Project Manager for this project is [NAME, ADDRESS, TELEPHONE NUMBER, EMAIL], or her/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 MPCA's Project Manager will certify acceptance of each invoice submitted for payment.

The Grantee's Authorized Representative is [NAME, TITLE, ADDRESS, TELEPHONE NUMBER, EMAIL]. If the Grantee's Authorized Representative changes at any time during this grant agreement, the Grantee must immediately notify the State.

The Grantee's Project Manager for this project is [NAME, ADDRESS, TELEPHONE NUMBER, EMAIL]. If the Grantee's Project Manager changes at any time during this grant agreement, the Grantee must immediately notify the State.

## 7. Assignment, Amendments, Change Orders, 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 **Change Orders.** If the State's Project Manager or the Grantee's Authorized Representative identifies a change needed in the workplan and/or budget, either party may initiate a Change Order using the Change Order Form provided by the MPCA. Change Orders may not delay or jeopardize the success of the Project, alter the overall scope of the Project, increase or decrease the overall amount of the Contract/Agreement, or cause an extension of the term of this Agreement. Major changes require an Amendment rather than a Change Order.

The Change Order Form must be approved and signed by the State's Project Manager and the Grantee's Authorized Representative **in advance of doing the work**. Documented changes will then become an integral and enforceable part of the Agreement. The MPCA has the sole discretion on the determination of whether a requested change is a Change Order or an Amendment. The state reserves the right to refuse any Change Order requests.

7.4 **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.

7.5 **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. The Grantee's response to the request shall comply with applicable law.

10.2 **Treatment of Data.** All data (information) related to this project and agreement that is maintained by the MPCA is public unless the Minnesota Data Practices Act, Minn. Stat. ch. 13, or other applicable state or federal law provides otherwise. Grantee shall use its best efforts to provide all information required to be submitted to MPCA in a form which can be released as public information. Grantee shall use its best efforts to prepare reports and other information without disclosing trade secret or sales information. If Grantee determines that it must disclose trade secret or sales information and Grantee wishes to keep that information from being subject to disclosure under the law, Grantee shall do the following:

1. In its report, Grantee shall segregate all information Grantee believes to not be subject to disclosure under the law from all other information.
2. Grantee shall submit a written request for the information to be treated as not subject to disclosure under the law, citing the reasons for such treatment. Grantee shall submit the request to the MPCA at the same time it submits the report containing the information in question.

The MPCA shall not consider a request to treat data as not subject to disclosure under the law unless it is made in accordance with the above two requirements. If a request is made in accordance with the above requirements, the MPCA shall promptly determine whether the information qualifies for nonpublic or private data treatment under Minn. Stat. §§ 13.37 and 115A.06. If the MPCA determines that the information may be treated as nonpublic or private data, the MPCA shall use its best efforts to treat the information accordingly.

### 10.3 **Intellectual Property Rights**

**(a) Intellectual property rights.** 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 Grant shall be jointly owned by the Grantee and the State. 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 Contractors, either individually or jointly with others in the performance of this grant agreement. Works include "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 grant agreement. The ownership interests of the State and the Grantee in the Works and Documents shall equal the ratio of each party's contributions to the total costs described in the budget of this grant agreement, except that the State's ownership interests in the Works and Documents shall not be less than fifty percent (50%). The party's ownership interest in the Works and Documents shall not be reduced by any royalties or revenues received from the sale of the products or the licensing or other activities arising from the use of the Works and Documents. Each party hereto shall, at the request of the other, execute all papers and perform all other acts necessary to transfer or record the appropriate ownership interests 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 grant agreement, the Grantee shall immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure therein. All decisions regarding the filing of patent, copyright, trademark or service mark applications and/or

registrations shall be the joint decision of the Grantee and the State, and costs for such applications shall be divided as agreed by the parties at the time of the filing decisions. In the event the parties cannot agree on said filing decisions, the filing decision will be made by the State.

- (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 Grantee and State as agreed herein, 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 Liability, the Grantee shall 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 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.

- (3) **License.** The State hereby grants a limited, no-fee, noncommercial license to the Grantee to enable the Grantee's employees engaged in research and scholarly pursuits to make, have made, reproduce, modify, distribute, perform, and otherwise use the Works, including Documents, for research activities or to publish in scholarly or professional journals, provided that any existing or future intellectual property rights in the Works or Documents (including patents, licenses, trade or service marks, trade secrets, or copyrights) are not prejudiced or infringed upon, that the Minnesota Data Practices Act is complied with, and that individual rights to privacy are not violated. The Grantee shall indemnify and hold harmless the State for any claim or action based on the Grantee's use of the Works or Documents under the provisions of Clause 10.3 (b)(2). Said license is subject to the State's publicity and acknowledgement requirements set forth in this grant agreement. The Grantee may reproduce and retain a copy of the Documents for research and academic use. The Grantee is responsible for security of the Grantee's copy of the Documents. A copy of any articles, materials or documents produced by the Grantee's employees, in any form, using or derived from the subject matter of this license, shall be promptly delivered without cost to the State.

- (c) **Reversion of Rights.** All rights or title to any intellectual property arising from the performance of the project that are vested in Grantee shall revert to the State under any of the following circumstances unless Grantee repays to the State those funds provided by the State under this grant agreement within ninety (90) days of receipt of a notice in writing from the State of a claim under this paragraph:

- (1) Grantee fails or is unable to market in Minnesota a product, process or service resulting from the project successfully within one year of the expiration of this grant agreement, unless Grantee is continuing to make good faith efforts to bring the product, process or service to market; or
- (2) Grantee dissolves, becomes inoperative or abandons the intellectual property resulting from the project;

Grantee shall execute all documents necessary for the reversion and transfer of ownership of the intellectual property rights to the State.

- (d) **Damages.** If Grantee acts in a manner inconsistent with Clause 10.3.a-c., the State may seek damages from Grantee. This clause is not intended to stand in lieu of any other remedy the State may have for breach of grant agreement of this or any other term of this grant agreement.



## 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 agreement 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 agreement.

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 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.

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

(a) It does not obtain funding from the Minnesota Legislature.

(b) 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 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 agreement 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.

To protect Grantee's personal data, Grantee is strongly encouraged to obtain and use a Minnesota tax identification number.

## 16. Nondiscrimination

The Grantee will comply with the provisions of Minn. Stat. § 181.59 which require: "Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
- (3) that a violation of this section is a misdemeanor; and
- (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."

During the performance of this grant agreement, neither the Grantee, nor those with whom the Grantee subcontracts for all or part of the work to be performed under this grant agreement shall, because of age, sexual preference, political affiliation, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability, discriminate against any person with respect to hire, tenure, compensation, terms of employment, upgrading of employment, facilities, privileges or conditions of employment; refuse to hire persons seeking employment; or, discharge an employee.

Neither the Grantee, nor those with whom the Grantee subcontracts for all or a portion of the work to be performed under this grant agreement shall exclude any person from participating in, deny them the benefits of, or discriminate against them on the basis of race, color, creed, religion, national origin, sex, marital status, age, sexual preference, political affiliation, or status with regard to public assistance or disability.

## 17. Human Rights, Equal Employment Opportunity, Affirmative Action

The Grantee, in the conduct of the project, shall comply with all applicable state and federal laws relating to nondiscrimination, affirmative action, and equal opportunity, now or hereafter enacted and any amendments thereto, including, but not limited to, Minn. Stat. ch. 363 (the Minnesota Human Rights Act), Minn. Stat. § 181.59 (applicable to contracts for materials, supplies, and construction for or on behalf of the State), and the Americans with Disabilities Act of 1990 (P.L. 100-336).

## 18. Debarment

18.1 ***Debarment by State, its departments, commissions, agencies, or political subdivisions.*** Grantee certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Grantee's certification is a material representation upon which the Grant award was based. Grantee shall provide immediate written notice to the MPCA's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

## Municipalities

### 19. Contracting and bidding requirements for municipalities

19.1 *Minn. Stat 471.345.* Per [Minn. Stat. §471.345](#), Grantees that are municipalities as defined in subd. 1 must follow municipal contract law if 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.

- (a) 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.
- (b) 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.
- (c) The Materials Management Division (MMD) operates a program for Targeted Group, Economically Disadvantaged, and Veteran-Owned small businesses. Grantees are strongly encouraged to contract with certified Targeted Group, Economically Disadvantaged, and Veteran-Owned small businesses.

19.2 **Obligations.** The Grantee is responsible for all work assigned to the Grantee under this Grant whether the work is actually performed by the Grantee or a subcontractor. The State considers the Grantee to be the sole point of contact with regard to matters governed by this grant, including payment of any and all charges resulting from this grant agreement. All subcontracts shall reference this grant agreement and require the subcontractor to comply with all of the terms and conditions of this grant agreement. The Grantee is responsible for ensuring that the subcontractor complies with all provisions of this grant agreement.

19.3 **Approval.** If the Grantee decides to fulfill any of its obligations and duties under this grant agreement through a subcontractor to be paid for by funds received under this grant agreement, the Grantee shall not execute a contract with the subcontractor or otherwise enter into a binding agreement until it has first received written approval from the State's Authorized Representative, unless such subcontract is a specific part of an approved project workplan included in this grant agreement.

The State's Authorized Representative shall respond to requests from the Grantee for authorization to subcontract within 10 (ten) working days of receiving the request.

19.4 **Payment.** As required by Minn. Stat. § 16A.1245, the Grantee must pay all subcontractors, less any retainage, within 10 (ten) calendar days of the Grantee's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to a subcontractor on any undisputed amount not paid in time to the subcontractor.

## Non municipal grantee

### 19. Contracting and bidding requirements

#### 19.1. *Contracting and bidding.*

- (a) 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.
- (b) 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.



(c) The Materials Management Division (MMD) operates a program for Targeted Group, Economically Disadvantaged, and Veteran-Owned small businesses. Grantees are strongly encouraged to contract with certified Targeted Group, Economically Disadvantaged, and Veteran-Owned small businesses.

- 19.2 **Obligations.** The Grantee is responsible for all work assigned to the Grantee under this Grant whether the work is actually performed by the Grantee or a subcontractor. The State considers the Grantee to be the sole point of contact with regard to matters governed by this grant, including payment of any and all charges resulting from this grant agreement. All subcontracts shall reference this grant agreement and require the subcontractor to comply with all of the terms and conditions of this grant agreement. The Grantee is responsible for ensuring that the subcontractor complies with all provisions of this grant agreement.
- 19.3 **Approval.** If the Grantee decides to fulfill any of its obligations and duties under this grant agreement through a subcontractor to be paid for by funds received under this grant agreement, the Grantee shall not execute a contract with the subcontractor or otherwise enter into a binding agreement until it has first received written approval from the State's Authorized Representative, unless such subcontract is a specific part of an approved project workplan included in this grant agreement.

The State's Authorized Representative shall respond to requests from the Grantee for authorization to subcontract within 10 (ten) working days of receiving the request.

- 19.4 **Payment.** As required by Minn. Stat. § 16A.1245, the Grantee must pay all subcontractors, less any retainage, within 10 (ten) calendar days of the Grantee's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to a subcontractor on any undisputed amount not paid in time to the subcontractor.

## 20. Insurance

- 20.1 **Commence work:** Grantee shall not commence work under the grant agreement until they have obtained all the insurance described below. Grantee shall maintain such insurance in force and effect throughout the term of the grant agreement.
- 20.2 **Grantee insurance requirements:** Per Minn. Stat. § 466.01, Grantees that are municipalities as defined in Subd. 1, must maintain coverage in conformance with the Tort Claims limits set forth in Minn. Stat ch. 466, with limits not less than \$500,000 per claimant and \$1,500,000 per occurrence for bodily injury and property damage.
- 20.3 **Subcontractor insurance requirements:** In any case work is subcontracted, the Grantee will require the subcontractor to provide the following insurance:
- (a) **Workers' Compensation:** Subcontractor must provide Workers' Compensation insurance for all employees in accordance with the statutory requirements of the State of Minnesota, including Employer's Liability. Insurance **minimum** amounts are as follows:
- \$100,000 – Bodily Injury by Disease per employee
  - \$500,000 – Bodily Injury by Disease aggregate
  - \$100,000 – Bodily Injury by Accident
- If Minn. Stat. § 176.041 exempts subcontractor from Workers' Compensation insurance, or if subcontractor has no employees in the State of Minnesota, subcontractor must provide a written statement to the Grantee, signed by an authorized representative, indicating the qualifying exemption that excludes subcontractor from the Minnesota Workers' Compensation requirements.
- (b) If during the course of the grant agreement the subcontractor becomes eligible for Workers' Compensation, the subcontractor must comply with the Workers' Compensation Insurance requirements herein and provide the Grantee with a certificate of insurance. **Commercial General Liability Insurance:** Subcontractor is required to maintain insurance protecting the Grantee from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the grant agreement.

Grantee will require subcontractor to provide Commercial General Liability. Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence
- \$2,000,000 – annual aggregate
- \$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- State of Minnesota named as an Additional Insured, to the extent permitted by law
- Other; if applicable, please list \_\_\_\_\_

- (c) **Commercial Automobile Liability Insurance:** Subcontractor is required to maintain insurance protecting the Grantee from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this grant agreement. Grantee will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

- Owned
- Hired
- Non-owned Automobile

#### 20.4 **Additional Insurance Conditions:**

- (a) Grantee's and/or subcontractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of the performance under this grant agreement.
- (b) Grantee and/or subcontractor is responsible for payment of grant agreement related insurance premiums and deductibles.
- (c) Grantee's and/or subcontractor's policy(ies) must include legal defense fees in addition to its liability policy limits.
- (d) If Grantee and/or subcontractor is self-insured, a Certificate of Self-Insurance must be attached to this grant agreement, upon written request.
- (e) Grantee and/or subcontractor must obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or obtain comparable coverage under a program of self-insurance.
- (f) An Umbrella or Excess Liability insurance policy may be used to supplement the Grantee's and/or subcontractor's policy limits to satisfy the full policy limits required by the grant agreement.
- (g) If Grantee and/or subcontractor receives a cancellation notice from an insurance carrier affording coverage herein, Grantee agrees to notify the MPCA within five (5) business days with a copy of the cancellation notice, unless Grantee's or subcontractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota.

20.5 **Termination, legal remedies, inspection.** The State reserves the right to immediately terminate the grant agreement if the Grantee and/or subcontractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Grantee. All insurance policies must be open to

inspection by the State, and copies of policies must be submitted to the State's Authorized Representative upon written request.

- 20.6 **Certificates of Insurance.** The Grantee is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the grant agreement, upon written request.

## 21. Permits and Approvals

The Grantee and Grantee's agents shall obtain all federal, state and local permits, licenses and authorizations necessary to implement and operate the project.

## 22. Health and Safety

The Grantee is responsible for taking all acts necessary to ensure the health and safety of personnel performing tasks associated with work funded under this grant agreement. Grantee shall be responsible for providing insurance to cover risks associated with work performed by subcontractors and volunteers.

## 23. Equipment (if applicable)

The Grantee must use equipment purchased under this agreement for as long as it is needed for the project and must not encumber the equipment. If Grantee ceases to use any equipment purchased for the project under this agreement during the term of this agreement, Grantee must sell the equipment for fair market value and reimburse the State seventy-five percent (75%) of the sale proceeds or, if the State's commitment of funding to the project is less than seventy-five percent (75%), and any MPCA-approved changes or amendments thereto, reimburse the State the percentage of the sale proceeds that equal the State's commitment of funding to the project. If the equipment cannot be sold, Grantee must obtain MPCA's prior written approval for appropriate disposition of the equipment.

## 24. Reporting Requirements

All reporting must be provided to the MPCA Authorized Representative. **All reports must be electronically submitted and must follow the format of the Continual Tracking Report** which incorporates the approved project workplan and budget.

- 24.1 **Monthly Reports.** The Grantee shall, if requested by the MPCA Authorized Representative, provide an oral or written monthly update on the progress of the project. These requested updates may require such information as tasks accomplished, financial expenditures, and other information deemed necessary by the MPCA Authorized Representative.
- 24.2 **Interim Report.** By the date specified in the project workplan, or prior to the second disbursement of funds, whichever occurs first, the Grantee shall prepare an interim report to the satisfaction of the MPCA Authorized Representative summarizing the status of the project and expenditures to date, including workplan tasks completed, status of timelines, interim results achieved, difficulties encountered in implementing the project, solutions considered or implemented to resolve those difficulties (Lessons Learned), and any project workplan and budget change orders/amendments.

The Interim Report shall also summarize all expenses incurred to date in completing workplan tasks including labor, equipment, materials, travel and other expenses outlined in the project workplan and budget. The Interim Report shall indicate the actual out-of-pocket cash and in-kind expenditures of the Grantee and the number of hours of labor performed pursuant to this agreement.

The Interim Report shall not be approved by the MPCA and payment shall not be disbursed unless the report contains the above information to the satisfaction of the MPCA.

### 24.3 **Final Report and Executive Project Summary**

1. **Final Report.** Within thirty (30) days after completion of tasks as specified in the project workplan, Grantee shall submit a final report to the MPCA. The Final Report shall describe, in detail, the history of and conclusions reached from implementing the project, the technical and economic feasibility of the project, and the total expenses incurred in implementing the project.

If the project is terminated prior to the scheduled completion, the Final Report shall also discuss the conclusions that led to the termination of the project, results achieved on all tasks completed and recommendations on how these results could be used in future projects.

If the MPCA determines that the information submitted in the Final Report is inadequate, the Grantee shall prepare and submit additional information reasonably requested by the MPCA. The Final Report shall not be approved by the MPCA and final payment shall not be disbursed unless the Report contains the specified information to the satisfaction of the MPCA.

**Executive Project Summary.** At the same time the Final Report is submitted, the Grantee must also submit a summary of the project and its results. This Executive Project Summary will be used in reports and to disseminate information on the outcomes and environmental benefits of the project.

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