

The Grantee (which refers to the applicant's status after it has been awarded grant funds) shall comply with all applicable federal, state and local laws, ordinances, rules and regulations and provisions stated herein in the performance of the grant award.

### **1. Survival of Terms**

The following clauses survive the expiration or cancellation of the award: 9. Liability; 10. Audits; 11. Government Data Practices; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction and Venue; 16. Data Disclosure, 17. Intellectual Property Rights and 18. Grant Product.

### **2. Financial and Administrative Provisions**

The Grantee will comply with all program guidelines specified in the Grant Program Guidelines (Guidelines) and application which are incorporated herein by reference.

**Budget Revisions:** The Grantee will submit a written change request for any substitution of budget items or any deviation in accordance with the Guidelines included in this application. Grantees whose requests have been approved will be notified in writing by the State's Authorized Representative to the Grantee's Authorized Representative. Requests must be approved prior to any expenditure by the Grantee.

### **3. Payment Terms**

**Payment:** The State will promptly pay the Grantee after the Grantee presents an invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services in accordance with the Guidelines included in this application. Expenditures for each state fiscal year (July through June) of the grant agreement must be for services satisfactorily performed within applicable state fiscal years.

Under Minn. Stat. § 16B.98 Subd. 1, the Grantee agrees to minimize administrative costs.

Under Minn. Stat. § 16B.98, Subd. 5 and 7, payments to the Grantee may not be issued until funds are encumbered and the grant agreement is fully executed.

### **4. Time**

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

### **5. Consideration and Payment**

The State will pay for all services performed by the Grantee under the grant agreement as a reimbursement according to the breakdown of costs contained in the Guidelines and Grantee's application that will be incorporated into the grant agreement. 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.

#### **5.1 Contract and Bidding Requirements – Municipal grantees**

Per Minn. Stat. §471.345, grantees that are municipalities must do the following if contracting funds from this grant contract agreement for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property

- a. If the amount of the contract is estimated to exceed \$175,000, a formal notice and bidding process must be conducted in which sealed bids shall be solicited by public notice. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2)

- b. If the amount of the contract is estimated to exceed \$25,000 but not \$175,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2) and paragraph (c).
- c. If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2)
- d. 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.
- e. 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.

## **5.2 Contract and Bidding Requirements – Non-governmental grantees**

A nongovernmental organization is an organization that is a nonprofit, also known as a charitable organization, that is formed for the purpose of fulfilling a mission to improve the common good of society rather than to acquire and distribute profits. The organization meets the definition in Minn. Stat. 309.50 Subd. 4 and meets the definitions defined in the Internal Revenue Service code, with the most common type being a 501 (c) (3).

- a. Any services and/or materials that are expected to cost \$100,000 or more must undergo a formal notice and bidding process.
- b. Services and/or materials that are expected to cost between \$25,000 and \$99,999 must be competitively awarded based on a minimum of three (3) verbal quotes or bids.
- c. Services and/or materials that are expected to cost between \$10,000 and \$24,999 must be competitively awarded based on a minimum of two (2) verbal quotes or bids or awarded to a targeted vendor.
- d. The grantee must take all necessary affirmative steps to assure that targeted vendors from businesses with active certifications through these entities are used when possible:
  - i. State Department of Administration's Certified Targeted Group, Economically Disadvantaged and Veteran-Owned Vendor List

- ii. Metropolitan Council's Targeted Vendor list: Minnesota Unified Certification Program
  - iii. Small Business Certification Program through Hennepin County, Ramsey County, and City of St. Paul: Central Certification Program
- e. The grantee must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
  - f. The grantee must maintain support documentation of the purchasing and/or bidding process utilized to contract services in their financial records, including support documentation justifying a single/sole source bid, if applicable.
  - g. Notwithstanding (a) - (d) above, the State may waive bidding process requirements when:
    - Vendors included in response to competitive grant request for proposal process were approved and incorporated as an approved work plan for the grant
    - It is determined there is only one legitimate or practical source for such materials or services and that grantee has established a fair and reasonable price.
  - h. 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.
  - i. The grantee must not contract with vendors who are suspended or debarred in MN: <http://www.mmd.admin.state.mn.us/debarredreport.asp>

## 6. Conditions of Payment

All services provided by the Grantee under the grant agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative so named in the grant agreement 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.

## 7. Authorized Representative

The State's Authorized Representative or his/her successor, is so named in the grant agreement and has the responsibility to monitor the Grantee's performance and has the authority to accept the services provided under the grant agreement opportunity. 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 so named in the grant agreement. If the Grantee's Authorized Representative changes at any time during the grant agreement, the Grantee must immediately notify the State.

## 8. Assignment, Amendments, Waiver, and Grant Agreement Complete

The Grantee may neither assign nor transfer any rights or obligations under the grant agreement without the prior consent of the State and a fully executed Amendment, executed and approved by the same parties who executed and approved the grant agreement, or their successors in office.

Any amendment to the 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.

If the State fails to enforce any provision of the grant agreement, that failure does not waive the provision or its right to enforce it.

The grant agreement contains all negotiations and agreements between the State and the Grantee. No other understanding regarding the grant agreement, whether written or oral, may be used to bind either party.

#### **9. Liability**

Grantee must indemnify, save and hold the State, its agents, and employees harmless from any claims or causes of action, including all attorneys' fees incurred by the State arising from the performance of the 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 the grant contract agreement and subsequent grant agreements. The liability for Grantees that are municipalities is governed by Minn. Stat. § 466 and any other applicable law, rule or regulation.

#### **10. 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 agreement or transaction are subject to examination by the Commissioner of Administration, by the State granting agency and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. Federal audits shall be governed by requirements of federal regulations.

If applicable, if the Grantee (known as the "subrecipient" in the Code of Federal Regulations) receives federal assistance from the State of Minnesota, it will comply with the Single Audit Act Amendments of 1996 and the Office of Management and Budget's Uniform Guidance: Cost Principles, Audit, & Administrative Requirements for Federal Awards, Subpart F (2 CFR 200) ; and, required audit reports must be filed with the State Auditor's Office, Single Audit Division, and with federal and state agencies providing federal assistance, and the Department of Public Safety within nine months of the Grantee's fiscal year end.

#### **11. Government Data Practices**

The Grantee and the State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by the State under the grant agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by the Grantee under the grant agreement. The civil remedies of Minnesota Statutes, section 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If 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 the applicable law.

#### **12. Workers' Compensation**

Grantee certifies that it is in compliance with Minnesota Statutes, § 176.181, Subdivision 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.

### **13. Publicity and Endorsement**

Any publicity regarding the subject matter of the grant agreement must be in accordance with the Guidelines included in this application. 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.

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

### **14. Governing Law, Jurisdiction, and Venue**

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

### **15. Termination**

Termination by the State. The State may terminate the grant agreement at any time, 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.

Termination by The Commissioner of Administration, The Commissioner of Administration may unilaterally cancel this grant contract agreement if further performance under the agreement would not serve agency purposes or is not in the best interest of the State.

Termination for Cause. The State may terminate the grant agreement immediately if the State finds that there has been a failure to comply with the provisions of the grant award, that reasonable progress has not been made or that the purpose 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.

Termination for Insufficient Funding. The State may immediately terminate the grant agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services under the grant agreement. 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 grant 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 receiving that notice.

### **16. Data Disclosure**

Under Minnesota Statutes, § 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, or pay other state liabilities.

**17. Intellectual Property Rights, if applicable**

**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 shall mean all inventions, improvements or discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks, conceived, reduced to practices, created or originated by the grantee, its employees, and subcontractors, either individually or jointly with others, in the performance of the contract. Works shall include the Documents. The Documents are the originals of any databases, computer programs, reports, notes, or other materials and documents, whether intangible or electronic forms, prepared by the Grantee, its employees, or subcontractors, in the performance of this Grant Contract Agreement. The Documents shall 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.

**18. Grant Product**

When applicable, the Grantee must own and maintain capital assets, as defined in the State of Minnesota Policy and User Guide, acquired with grant funds in a manner consistent with the original purpose of this grant and in accordance with grantee capital equipment policies and procedures. The Grantee shall not at any time during the useful life of the property (useful life defined as an estimate of the number of years the property remains in usable condition for the purpose intended as set forth in the grant agreement and associated documents), sell, dispose or convert property acquired pursuant to this grant to uses other than those specified, without the prior written approval of Grantor.

**19. Other Provisions be it understood:**

- a. By filing of this application, the applicant has therefore obtained the necessary legal authority to apply for and receive the proposed grant;
- b. The filing of this application has been authorized by applicant's governing body, and the official who has applied his/her electronic signature to this application has been duly authorized to file this application for and on behalf of said applicant, and otherwise to act as the representative of the applicant in connection with this application;
- c. The activities and services for which assistance is sought under this grant will be administered by or under the supervision and control of applicant;
- d. Fiscal control and accounting procedures will be used to ensure proper disbursement of all funds awarded;

**Agreement to Acknowledge the Terms and Conditions are Incorporated Into the Grant Agreement:**

By submitting this application, the authorized Representative for the Grant Applicant, acknowledges that they have read the Terms and Conditions in their entirety as stated within the Application materials and acknowledge that the Terms and Conditions will be incorporated into the Grant Agreement if funds are awarded to the Applicant under this Application. As authorized, if the Applicant is awarded funds under this Application, they will submit the required documents and certification on behalf of the Applicant Organization.