

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

11-0522R

AS AMENDED

RESOLUTION AUTHORIZING APPLICATION FOR AND ACCEPTANCE OF, IF OFFERED, A PARKS AND TRAILS LEGACY GRANT OF \$500,000 FOR IMPROVEMENTS TO INDIAN POINT CAMPGROUND AND COMMITTING THE \$50,000 LOCAL SHARE

CITY PROPOSAL:

RESOLVED, that city act as legal sponsor for the project contained in the park legacy application to be submitted on or before October 31, 2011, and that the city's chief administrative officer is hereby authorized to apply to the Minnesota department of natural resources (MnDNR) for funding of this project on behalf of city.

FURTHER RESOLVED, that city has the legal authority to apply for financial assistance, and financial capability to meet the match requirement and ensure adequate construction, operation, maintenance and replacement of the proposed project for its design life.

FURTHER RESOLVED, that city has not incurred any development costs or entered into a written purchase agreement to acquire the property in connection with the project.

FURTHER RESOLVED, that if the aforesaid grant is offered, the proper city officials are authorized to enter into a grant agreement with MnDNR substantially in the form of that on file in the office of the city clerk as Public Document No. _____ agreeing to the project and to provide the city's \$50,000 local share of the project cost payable from Fund 110-700-1420-5530 (general fund, transfers and other functions, capital program, improvements other than buildings).

FURTHER RESOLVED, that any grant proceeds received from the park legacy application will be used for the full reconstruction of the restroom facilities including compliance with the Americans with Disabilities Act.

PARKS LP:slw 9/30/2011

STATEMENT OF PURPOSE: This resolution authorizes the application and acceptance by the proper city officials of a grant from MnDNR for parks and trails legacy grant monies for the purpose of the development of Indian Point Campground to expand its use to that of a regional park as recommended under the parks master plan. This grant will allow for the implementation of Phase I of the master plan: expansion of parking; building of playground; volleyball courts, bocce/horseshoe area, an accessible trail from the parking lot to the Western Waterfront Trail, a pavilion for weddings and other special events, picnic shelters, green space/play area, and improving the accessibility of the washroom building. The grant amount to fund these improvements will be \$500,000 which will require local share contribution of only \$50,000, a leverage ratio of 10 to 1. By accepting this grant the city is committing the property to public use and understands that state approval is required before public lands at Indian Point Campground developed using grant monies are converted in whole or in part to any use other than that authorized in the grant agreement.

**STATE OF MINNESOTA
GRANT AGREEMENT
Park Legacy Grants
PL09-**

This grant agreement is between the State of Minnesota, acting through its Commissioner of Natural Resources ("State") and [GIVE THE FULL NAME OF THE GRANTEE INCLUDING ITS ADDRESS] ("Grantee").

Recitals

1. Under Minn. Stat. 84.026 and 85.535 Parks and Trails Grant Program, the State is empowered to enter into this grant.
2. The Grantee has made application to the State for a portion of the allocation for the purpose of conducting the project entitled <Project Name> in the manner described in the Grantee's APPLICATION which is incorporated into this Agreement by reference.
3. 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.

Grant Agreement

1 Term of Grant Agreement

1.1 **Effective date:** [SPELL OUT FULL DATE (e.g., April 1, 2001)]

No reimbursements will be made until or upon the date that the final required signature is obtained by the State, pursuant to Minnesota Statutes Section 16C.05, subdivision 2.

1.2 **Expiration date:** [SPELL OUT FULL DATE (e.g., April 1, 2001)], 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: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Signage, Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; 15 Data Disclosure, 18 Inspections, 19 Resource Management and Protection and 20 Program Requirements.

- 2 Grantee's Duties** (see Attachment A, which is incorporated by reference and made a part of this agreement.)
The Grantee, who is not a state employee, will:

[PROVIDE SUFFICIENT DETAIL IN THE DUTIES SO THAT YOU CAN HOLD THE GRANTEE ACCOUNTABLE FOR THIS WORK.]

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 agreement. 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 agreement. In the performance of this grant agreement, time is of the essence.

4 Consideration and Payment

4.1 **Consideration.** Consideration for all services performed by Grantee pursuant to this grant agreement shall be paid by the State as follows:

1. **COMPENSATION:** Compensation in an amount up to ⁹⁰~~75~~% of the total project not to exceed \$ _____ based on the following computation: See Attachment A for Project budget.

2. **MATCHING REQUIREMENTS:** Grantee certifies that the following matching requirement for the Grant will be met by GRANTEE. The Grantee agrees to provide a cash match of at least ~~25%~~ ^{10%} of the total project costs or \$ _____, whichever is less.

THE TOTAL STATE OBLIGATION FOR ALL COMPENSATION AND REIMBURSEMENTS TO GRANTEE SHALL NOT EXCEED:

Funds made available pursuant to this Agreement shall be used only for expenses incurred in performing and accomplishing the purposes and activities specified herein. Notwithstanding all other provisions of this Agreement, it is understood that any reduction or termination of funds allocated to the State may result in a like reduction to the Grantee.

Where provisions of the Grantee's APPLICATION are inconsistent with other provisions of the Agreement, the other provisions of this Agreement shall take precedence over the provisions of the APPLICATION.

4.2. **Payment**

(1) **Payment.** The State shall disburse funds to the Grantee pursuant to this Agreement 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 Agreement. The Grantee shall submit a final billing within 30 days of the end of the project period.

(2) **Federal funds.** (Where applicable, if blank this section does not apply) Payments under this grant agreement will be made from federal funds obtained by the State through Title _____ CFDA number _____ of the _____ Act of _____. The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee's failure to comply with federal requirements.

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 is [NAME, TITLE, ADDRESS, TELEPHONE NUMBER], 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 agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

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

7 **Assignment, Amendments, Waiver, and Grant agreement Complete**

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

7.2 **Amendments.** Any amendment 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 **Waiver.** If the State fails to enforce any provision of this grant agreement, that failure does not waive the provision or its right to enforce it.

7.4 **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. §16C.05, subd. 5, the Grantee's books, records, documents, and accounting procedures and practices relevant to this grant agreement 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.

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.

10.2. **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 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 **Signage, Publicity and Endorsement**

12.1 **Signage** Any site developed or improved by this grant agreement shall display a sign, in a form approved by the State

12.2 **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.

12.3 **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 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**

The State may cancel this 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.

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 **American Disabilities Act**

The Grantee must comply with the following accessibility guidelines:

16.1. Americans with Disability Act Accessibility Guidelines for Buildings and Facilities (ADAAG), 2002.

The amended accessibility guidelines include a new section 15 that provides guidelines for recreation facilities such as boating and fishing facilities, golf, swimming pools and play areas. Also included in the new amended guidelines, is a definition of "Area of Sport Activity" and requirements for accessible routes to the area of sport activities and sport courts.

16.2. Regulatory Negotiation Committee on Accessibility Guidelines for Outdoor Developed Areas Final Report, 1999. Until incorporated into the ADAAG standards, the final report for outdoor developed areas should be used for designing recreational facilities such as campgrounds, picnic areas, trails, and beaches.

17 Reporting Requirements

The Grantee shall submit a progress report, in a form prescribed by the State, by February 15th.of each year during the term of this grant agreement. A final report must be submitted with the request for final reimbursement. Forms will be provided by the state.

18 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 agreement, 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.

19 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 agreement. 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. Failure to adequately manage, maintain and properly protect the resources and property assisted through this grant agreement may result in the withholding by the State of any current or future payments to the Grantee related to this or any other Local Grants projects and may result in ineligibility of the Grantee to receive future Local Grants Program Grants.

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.

20 Program Requirements

The grantee must comply with Attachment B, Parks and Trails Legacy Program Requirements.

1. STATE ENCUMBRANCE VERIFICATION

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

Signed: _____

Date: _____

CFMS Grant agreement No. B-_____

2. GRANTEE

The Grantee certifies that the appropriate person(s) have executed the grant agreement 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 - Photo Copy

Attachment B

Parks and Legacy Program Requirements

Land Retention Requirements:

1. **CONVERSION OF USE:** It is the intention of the State that the area funded by this agreement shall exist in the Grantee's ownership and be perpetually maintained and managed to protect its natural, scenic and/or recreational resources. The area funded by this Agreement [hereinafter "Funded Area"] is depicted in Attachment C – Project Boundary which is incorporated by reference and made part of this agreement. The Grantee shall not at any time convert any of the Funded Area to uses other than the permitted uses specified in this agreement without the prior written approval of the State.

The State will consider a conversion request only after the following pre-requisites have been met:

- a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis;
- b. The Grantee has agreed to replace the converted lands with other lands of at least equal fair market value and reasonably equivalent natural and or scenic resources as determined by the State.

The State shall have the authority to approve or disapprove conversion requests.

2. **DEED RESTRICTION REQUIREMENT:** The Grantee shall have the following condition or a similar condition pre-approved by the state, recorded with the deed(s) to all of the Funded Area and submit an attested copy of the deed(s) and the condition to the State:

In order to comply with the Department of Natural Resources Parks Legacy Grant Agreement <Project #>, <Grantee> does hereby impose the following restrictions on the property: The property shall be managed and maintained consistent with the purpose and type of property acquired and/or developed using appropriate management and protection practices to protect the natural, scenic and/or recreational resources. The Grantee shall not at any time convert any portion of the area to uses other than permitted in this Agreement without the prior written approval of the State.

Data Availability: Data collected by the projects funded with money from the parks and trails fund that have value for planning and management of natural resources, emergency preparedness, and infrastructure investments must conform to the enterprise information architecture developed by the Office of Enterprise Technology. Spatial data must conform to geographic information system guidelines and standards outlined in that architecture and adopted by the Minnesota Geographic Data Clearinghouse at the Minnesota Geospatial Information Office. A description of these data that adheres to the Office of Enterprise Technology geographic metadata standards must be submitted to the Minnesota Geospatial Information Office to be made available online through the clearinghouse and the data must be accessible

and free to the public unless made private under chapter 13. To the extent practicable, summary data and results of projects and programs funded with money from the parks and trails fund should be readily accessible on the Internet and identified as a parks and trails fund project.

Project Technology: A project must be consistent with current science and incorporate state-of-the-art technology, except when the project or program is a portrayal or restoration of historical significance.

Sign Requirement: A recipient of money from the parks and trails fund must display a sign on lands and capital improvements purchased, restored, or protected with money from the parks and trails fund that includes the logo developed by the commissioner of natural resources to identify it as a project funded with money from the vote of the people of Minnesota on November 4, 2008.

Native Restoration: To the extent possible, a person conducting restoration with money appropriated in this section must plant vegetation or sow seed only of ecotypes native to Minnesota, and preferably of the local ecotype, using a high diversity of species originating from as close to the restoration site as possible, and protect existing native prairies from genetic contamination.

Minnesota Historical Sites Act and Minnesota Field Archaeology Act review: The Minnesota Historical Society will be contacted to review your project to determine if the site is a potential location for historical or archeological findings. If the Historical Society 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.