

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0288R

RESOLUTION AUTHORIZING AN AMENDMENT TO A MINNESOTA HISTORICAL AND CULTURAL GRANT AGREEMENT WITH THE MINNESOTA HISTORICAL SOCIETY AND FURTHER AUTHORIZING A SUBGRANT AGREEMENT WITH SUMMIT ENVIROSOLUTIONS TO IMPLEMENT A HISTORIC RESOURCES SURVEY OF THE EAST END RESIDENTIAL AREA - PHASE IVa IN AN AMOUNT NOT TO EXCEED \$16,415.

CITY PROPOSAL:

RESOLVED, that the proper city officers are hereby authorized to enter into a Minnesota historical and cultural grant agreement amendment with the Minnesota historical society, substantially in the form of that on file in the office of the city clerk as Public Document No. \_\_\_\_\_, accepting a grant in the amount of \$11,415, related to a historic resources survey of the east end residential area - Phase IVa, payable into Fund 210 (special projects), Agency 030 (finance), Organization 3150 (miscellaneous), Object 4210-02 (pass through federal grants).

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into a Minnesota historical and cultural subgrant agreement with Summit Envirosolutions, Inc., substantially in the form of that on file in the office the city clerk as Public Document No. \_\_\_\_\_, to implement the historic resources survey of the east end residential area - Phase IVa, in the amount of \$16,415. The sum of \$11,415 payable from Fund 210 (special projects), Agency 030 (finance), Organization 3150 (miscellaneous), Object 5441 (other services and charges) and \$5,000 payable from Fund 265

(community development), Agency 020 (planning), Object 5441 (other services and charges).

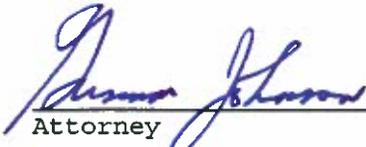
Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

PLNG CF:bel 06/01/2012

STATEMENT OF PURPOSE: This resolution is an amendment of an earlier agreement between the City, the State, and Summit Envirosolutions. The Minnesota State Historical Society is re-programming unused funds in order to allow the City to continue to inventory historical structures in east Duluth. Funds for this survey include the Minnesota Historical Society, CDBG and in-kind match from the City. These funds add to the current agreement as shown below.

Phase III	\$18,750	State	\$4,000	CDBG	\$3,710	Match	\$26,460	Total
Phase Iva	\$11,415	State	\$5,000	CDBG	\$00.00	Match	\$16,415	Total
Total	\$30,165	State	\$9,000	CDBG	\$3,710	Match	\$42,875	Total

This action also extends the deadline for completion of the Phase IVa inventory to August 31, 2012.

This resolution authorizes the proper city officials to execute an agreement, substantially in the form of the contract filed as Public Document No. \_\_\_\_\_, with Summit Envirosolutions of St. Paul, MN an amendment for professional services in the development of a Historic Resource Survey for the East End Residential Area - Phase IVa, in an amount not to exceed \$16,415 payable from Fund 110 (general fund), Agency 130 (community resources), Organization 1301 (planning and development), Object 5319 (other professional services).

MINNESOTA HISTORICAL SOCIETY  
 CERTIFIED LOCAL GOVERNMENT GRANT AGREEMENT  
 MHS Contract No. 4207508 Amendment No. 1

<u>ACCOUNT NO.</u>	<u>F.Y.</u>	<u>OBJECT CODE</u>	<u>FEDERAL PROJECT NO.</u>	<u>DOLLAR AMOUNT</u>
00284	2012	5260	27-11-31930.007	\$11415 increase

MHS Contract No. 4207508 is hereby amended as follows:

Grant Time Period, of Attachment A, is amended to extend the time period to August 31, 2012.

Work Summary, of Attachment A, is amended as follows:

The project will consist of an intensive level survey of the city's east end residential area. The survey area is approximately 162 city blocks. The project will be accomplished under the supervision of personnel meeting the Secretary of the Interior's Professional Qualifications Standards.

Project Budget, of Attachment A, is amended as follows:

<u>BUDGET ITEMS</u>	<u>GRANT</u>	<u>RECIPIENT MATCH</u>			<u>TOTAL</u>
		<i>Cash</i>	<i>In-Kind</i>	<i>Other</i>	
Consultant (CDBG Cash Match)	\$30,165	\$9,000			\$39,165
GIS (Planner II (\$35/65))			\$2,275		\$2,275
Project Director (\$49/25)			\$1,225		\$1,225
HPC (7 members x 3 hrs each)			\$210		\$210
<b>TOTALS</b>	<b>\$30,165</b>	<b>\$9,000</b>	<b>\$3,710</b>		<b>\$42,875</b>

Reimbursement Schedule, of Attachment A, is amended as follows:

The CITY will be reimbursed, in total amount not to exceed \$30,165 for the actual amounts expended under the federal (HPF) portion of the budget. The CITY must submit a Request for Reimbursement Form along with appropriate fiscal documentation, Final Products, and Project Director's Report to the SOCIETY'S Grants Office no later than September 15, 2012. All project work must be completed no later than August 31, 2012.

All other terms and conditions of the original agreement remain in full force and effect.

MINNESOTA HISTORICAL SOCIETY

CITY OF DULUTH

\_\_\_\_\_  
 Kathryn Ludwig, Contracting Officer (date)

\_\_\_\_\_  
 signature (authorized official) (date)

\_\_\_\_\_  
 print name and title



## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT**, effective as of the \_\_\_\_ day of \_\_\_\_\_, 2012; by and between **THE CITY OF DULUTH, MINNESOTA**, a municipal corporation of the state of Minnesota, whose address is 411 W 1<sup>st</sup> St., Duluth, 55802 (the "Client"), and **SUMMIT ENVIROSOLUTIONS, INC.**, doing business at 1217 Bandana Boulevard North, St. Paul, MN 55108 (the "Contractor").

**WHEREAS**, the Client is interested in obtaining a Historic Resources Survey of the East End Residential Area-Phase IVa; and

**WHEREAS**, the Client desires to engage the Contractor to undertake the development of that Re-Design:

**NOW, THEREFORE**, the parties hereto mutually agree as follows:

1. **Scope of Services.** The Contractor agrees to provide those services described in Exhibit A and Exhibit B, which is a part of this document. The Client agrees to provide supporting services to the Contractor as described in Exhibit A and Exhibit B.
2. **Time of Performance.** The services of the Contractor are to commence on the date as stated above and shall be completed as expeditiously as possible, but in any event on or before August 31, 2012. The time of performance may be extended by mutual agreement of the parties.
3. **Method of Payment & Total Project Amount.** The Client shall compensate Contractor for its services and deliverables according to Exhibit A, Payment Schedule, and upon completion of all the deliverables as identified in Exhibit A. It is expressly understood and agreed that in no event will the total compensation and reimbursement to be paid hereunder exceed the sum of \$16,415 for all services rendered. By mutual agreement, the Client and Consultant may reallocate the budget among project tasks if the total budget amount remains unchanged. Fees and expenses shall be payable from \$5,000.00 Community Development Fund 265-020-5441 (Other Services and Charges) and from \$11,415 Planning 210-030-3150-4210-02 (Special Projects Fund, Finance Department, Miscellaneous, Federal Grants)
4. **General Terms and Conditions.**
  - A. **Termination of Agreement.** The Client shall have the right to terminate this Agreement, with or without cause, by giving written

notice to the Contractor of such termination and specifying the effective date of the termination, which notice shall be given at least 30 days before the effective date of the termination. In that event all finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall become the Client's property. Contractor shall be entitled to receive compensation in accordance with the Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to the date of termination. Notwithstanding the above, Contractor shall not be relieved of liability to the Client for damages sustained by the Client by virtue of any breach of the Agreement of the Contractor.

- B. Changes. The Client may, from time to time, request changes in the scope of services of the contractor to be performed. Such changes, including the increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon between the Client and the Contractor, shall be in writing and upon execution shall become part of the Agreement.
- C. Assignability. Any assignment or attempted assignment of this Agreement by Contractor without the prior written consent of the Client shall be void; provided, however, that claims for money due or to become due to Contractor from the Client under this Agreement may be assigned to a bank, or other financial institution, without such approval. Notice of any such assignment or transfer shall be furnished to the Client.
- D. Audit. Contractor agrees that, as provided in Minnesota Statutes 16C.05, Subdivision 5, all Contractor books, records, documents, and accounting procedures and practices are subject to examination by the City or the Minnesota State Auditor for six (6) years from the date of execution of this Agreement. Upon reasonable notice by the City, Contractor shall provide all requested financial information. Five business days shall be deemed reasonable notice.
- E. Ownership of Documents and Government Data Practices. Drawings, specifications, guidelines and other documents prepared by Contractor in connection with this Agreement shall be the property of the Client. However, Contractor shall have the right to utilize such documents in the course of its marketing, professional presentations, and for other business purposes. Pursuant to Minnesota Statutes Section 13.05, Subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services provided for herein is subject

to the requirements of the Minnesota Government Data Practices Act (Minn. Stat. Chap. 13) and Contractor shall comply with the requirements of the Act as if it were the City.

- F. **Assignment of Copyrights.** Contractor assigns to Client the copyrights to all work prepared, developed, or created pursuant to this agreement, including the right to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public; 4) perform the works publicly; and 5) to display the work publicly. Contractor shall have right to use materials produced in the course of this contract for marketing purposes and professional presentations, articles, speeches and other business purposes.
- G. **Governing Law.** This Agreement has been executed by the parties on the day and year first above written and shall be governed by the laws of the State of Minnesota. Contractor shall also comply with all applicable state and federal laws and regulations and resolutions of the Client, and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Agreement. Jurisdiction of any dispute between the parties and/or arising under the Agreement shall be in the District Court of Minnesota, St. Louis County.
- H. **Notices.** Any notice concerning the terms and conditions of this Agreement shall be in writing and delivered, either personally or by mail (postage prepaid). If the notice is from the Contractor to the Client, it shall be addressed to Keith Hamre at the address for the Client set forth in the first section of this Agreement. If the notice is from the Client to the Contractor, the notice shall be addressed to Andrew Schmidt at the address of the Contractor set forth in the first section of this Agreement. Notices shall be deemed effective upon delivery in the event of personal delivery, and after three (3) days when mailed, postage prepaid; if transmitted by facsimile or telegram, upon verified receipt of the electronic transmission. Either party may change its address in reference to notices by written notification to the other party.
5. **Indemnification.** Contractor shall indemnify and hold Client harmless from and against and all claims, suits, or action made or asserted for any damage to person or property occasioned by the negligent errors or omissions by Contractor in connection with performance of Contractor's obligation under this Agreement.
6. **Insurance.**

- A. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota.
- (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
  - (2) Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
  - (3) Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days notice prior to any cancellation or modification shall be required; and in such event, Contractor agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
  - (4) City shall be named as Additional Insured under the Public Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and City. Contractor shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.
  - (5) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.
  - (6) The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured

endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.

- B. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
- C. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- D. The City shall be named as an additional insured on each liability policy other than the professional liability and the workers' compensation policies of the Contractor.
- E. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least 30 days advanced notice being given to the City.

**7. Independent Contractor.**

- A. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Contractor as an agent, representative or employee of the City for any purpose or in any manner whatsoever. Contractor and its employees and agents shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Contractor's employees while so engaged, and any and all claims whatsoever on behalf of Contractor's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in this Agreement, Contractor's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Contractor from liability or

judgments arising out of Contractor's intentional or negligent acts or omissions of Contractor or its employees while performing the work specified by this Agreement.

- B. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
  - C. Contractor expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.
8. **Extent of Agreement.** This Agreement represents the entire and integrated agreement between the Client and the Contractor and supersedes all prior negotiations, representations or agreement, either written or oral. This Agreement may be amended only by written Agreement signed by both the Client and the Contractor.
9. **Severability.** In the event that any provision of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this agreement shall remain valid and binding upon the parties.

**SUMMIT ENVIROSOLUTIONS  
INCORPORATED**

**CITY OF DULUTH, MINNESOTA**

BY: \_\_\_\_\_  
Kevin McClaron  
Title: Treasurer  
Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Don Ness  
Title: Mayor  
Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Jeffrey Cox  
Title: City Clerk  
Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Wayne Parson  
Title: City Auditor  
Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Gunnar Johnson  
Title: City Attorney  
Date: \_\_\_\_\_

# EXHIBIT A

**NAME OF PROJECT:** Historic Resources Survey of the East End Residential Area-Phase IVa

**SCOPE OF WORK:** This is an extension of a current contract for work on Phase III with Summit Envirosolutions. Phase IVa is an intensive level survey of the City's east end residential district and builds on three previous surveys: East End Phase I from 2006-2007, East End Phase II from 2008-2009 and East End Phase III 2011-2012. In addition, it will build on the 1984 windshield survey of 2,000 historic structures. This survey will contribute to the established database of information on historic structures within the City to help the Duluth HPC develop strategies for preservation, serve as reference for the general public, guide property owners to protect and preserve their neighborhoods, and help the City Planning Division in administering the UDC, and in implementation of the Comprehensive Land Use Plan.

The East End Phase IVa residential area survey is funded by the Minnesota Historical Society for \$11,415, with \$5,000 in matching funds from the CDBG Program. The proposed contract with the consultant is \$16,415.

The attached map provides detail on the area to be inventoried.

**GOAL:** One Residential Area Historic Survey

**INCOME VERIFICATION METHOD:** Not Applicable

**CDBG BUDGET:**

<u>Sources</u>	<u>CDBG</u>	<u>CLGA</u>	<u>Total</u>
Phase IVa	\$5,000	\$11,415	\$16,415
<b>Grand Totals</b>	<b>\$5,000</b>	<b>\$11,415</b>	<b>\$16,415</b>

**Formula Reimbursement:**

Quarterly Reimbursement based on the following Performance Indicators:

1. Completion of Research Design, Background Research and Survey. Thirty percent of contract amount
2. Inventory and Database completion. Thirty percent of contract amount.
3. Submission of draft survey. Thirty percent of contract amount.
4. Acceptance of survey by the Duluth HPC. Ten percent of contract amount.

**Final Outcome Measurement:**

Completed Historic Resources Survey of the East End Residential Area-Phase IVa.

# EXHIBIT B

MINNESOTA HISTORICAL SOCIETY  
 CERTIFIED LOCAL GOVERNMENT GRANT AGREEMENT  
 MHS Contract No. 4207508 Amendment No. 1

<u>ACCOUNT NO.</u>	<u>F.Y.</u>	<u>OBJECT CODE</u>	<u>FEDERAL PROJECT NO.</u>	<u>DOLLAR AMOUNT</u>
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Project Budget, of Attachment A, is amended as follows:

BUDGET ITEMS	<u>GRANT</u>	<u>RECIPIENT MATCH</u>			<u>TOTAL</u>
		<i>Cash</i>	<i>In-Kind</i>	<i>Other</i>	
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Reimbursement Schedule, of Attachment A, is amended as follows:

The CITY will be reimbursed, in total amount not to exceed \$30,165 for the actual amounts expended under the federal (HPF) portion of the budget. The CITY must submit a Request for Reimbursement Form along with appropriate fiscal documentation, Final Products, and Project Director's Report to the SOCIETY'S Grants Office no later than September 15, 2012. All project work must be completed no later than August 31, 2012.

All other terms and conditions of the original agreement remain in full force and effect.

MINNESOTA HISTORICAL SOCIETY

CITY OF DULUTH

\_\_\_\_\_  
 Kathryn Ludwig, Contracting Officer (date)

\_\_\_\_\_  
 signature (authorized official) (date)

\_\_\_\_\_  
 print name and title

