

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0067R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A SUB-GRANT AGREEMENT WITH THE STATE OF MINNESOTA DEPARTMENT OF NATURAL RESOURCES FOR \$2,400,000 FOR HAZARD MITIGATION ASSISTANCE AND TO BEGIN TO PURCHASE AND DEMOLISH FLOOD DAMAGED PROPERTIES

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to accept a grant in the amount of \$2,400,000 and execute the agreement pertaining to Hazard Mitigation Assistance, substantially in the form of the copy on file in the office of the city clerk as Public Document No. _____, with the State of Minnesota Department of Natural Resources. Funds shall be deposited in Fund 225 (disaster recovery fund), Agency 125 (finance department), Object 1808 (disaster aids), Revenue Source 4220-04 (revenues, State of Minnesota Flood Hazard Mitigation).

BE IT FURTHER RESOLVED, that authorized city officials are hereby authorized to enter into purchase agreements for acquiring and demolishing the properties identified in the grant agreement and land acquisition expenditures shall come from Fund 225 (disaster recovery fund), Agency 125 (finance department), Object 1809 (flood hazard mitigation), Project 5510 (Land) and are not to exceed \$2,400,000.

State Cost Share	FEMA Cost Share	Address	Special Flood Hazard Area (Flood Map)	Year Built
25%	75%	1 131st Ave W Duluth, 55808	Fringe	1928
25%	75%	102 131st Ave W Duluth 55808	Fringe	1920
25%	75%	13002 W 3rd St Duluth 55808	Fringe	1928
25%	75%	1126 W 2nd St Duluth 55806	Floodway	1891
25%	75%	12304 State Hwy 23 Duluth 55808	Floodway	1921
25%	75%	12810 Water Street Duluth 55808	Floodway	1960
25%	75%	13001 Cass St Duluth 55808	Floodway	1958
25%	75%	13002 Water St Duluth 55808	Floodway	1926
25%	75%	1622 Wavery St Duluth 55803	Floodway	1959
25%	75%	32 S 59th Ave W Duluth MN 55807	Floodway	1914
100%	0%	13225 W 4th St Duluth 55808	No	2011
100%	0%	1616 E Skyline Pkwy 55805	No	1938
100%	0%	12 S 59th Ave Duluth 55807	No	1908
100%	0%	14 S 59th Ave W Duluth 55807	No	1899
100%	0%	18 S 59th Ave W Duluth 55807	No	1902
100%	0%	1101 97th Ave W Duluth 55808	No	1916
100%	0%	216 E House St Duluth 55808	No	1913
100%	0%	306 N 63rd Ave W Duluth 55807	No	1913
100%	0%	326 S 17th Ave E Duluth 55812	No	1891
100%	0%	3414 W 1st St Duluth 55807	No	1908

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

CD BV:bel 01/30/2013

STATEMENT OF PURPOSE: This resolution authorizes the City of Duluth to sign an agreement with the Minnesota Department of Natural Resources for funding and to begin acquiring properties that were damaged in the flood.

The funds from the state will be used to purchase and demolish homes outside of the floodway that were severely damaged in the June 2012 flood. These funds will also be used to meet the required 25% match to purchase and demolish the properties within the floodway, which will receive funding from the Division of Homeland Security Emergency Management, which would be authorized in resolution 13-0066R.

This program is voluntary and city staff is actively working with ten residential property owners and one non-residential property (Westminster Presbyterian Church) who have expressed interest in the process. Homes will

be purchased at their appraised value. This program will assist homeowners whose homes received substantial damage and the cost to repair was prohibitive.

Funds include the demolition of the properties. After acquiring the properties the city will contract with a firm to demolish and remove debris from the property. This will be done through a separate bidding process that will be approved by the City Council. The land will then remain undeveloped, under public ownership in perpetuity.

**FLOOD HAZARD MITIGATION GRANT AGREEMENT
BETWEEN THE STATE OF MINNESOTA
AND CITY OF DULUTH, MINNESOTA**

THIS Grant is made between the State of Minnesota, acting by and through its Commissioner of Natural Resources (hereinafter the "State") and the City of Duluth, 407 City Hall, Duluth, MN, 55802 (hereinafter the "Grantee").

WHEREAS, the State is authorized by Minnesota Statutes Section 103F.161 to provide flood hazard mitigation grants to local units of government to conduct flood plain damage reduction studies and/or plan and implement flood mitigation measures; and

WHEREAS, the Grantee has submitted a request for assistance to the State for a flood hazard mitigation grant; and

WHEREAS, the State has determined that the Grantee should receive flood hazard mitigation assistance; and

WHEREAS, the Grantee represents that it is duly qualified and willing to perform the services set forth herein.

NOW THEREFORE, it is agreed between the State and the Grantee as follows:

1.0 AMOUNT OF GRANT

1.1 STATE SHARE

The State shall award the Grantee 100 percent (100%) of the non-federal costs of the approved Project as identified in Section 2.1 (hereinafter "Project"), or \$2,400,000.00 whichever is less, for the costs authorized herein. The total obligation of the State for all compensation and reimbursements to Grantee under this Grant shall not exceed \$2,400,000.00.

1.2 GRANTEE SHARE

The Grantee is not required to match the State share of the costs of the Project.

2.0 AUTHORIZED PROJECT

2.1 PROJECT PLAN

The proceeds of this Grant are to be used solely for the Project, which is described in Exhibit A, attached hereto. A detailed description of the nature and scope of the Project is described in Exhibit A, and as subsequently amended or revised, which is incorporated herein by reference.

2.2 ADMINISTRATION AND SUPERVISION

The Grantee shall be responsible for the administration, supervision, management and Project oversight that may be required for the work performed under this Grant.

3.0 ACKNOWLEDGMENTS

The Grantee agrees to acknowledge the State's financial support for the Project. Any statement, press release, bid, solicitation, or other document issued describing the Project shall provide information reflecting that State funds were used to support the Project and will contain the following language:

This Project is made possible in part by a grant provided by the Minnesota Department of Natural Resources, through an appropriation by the Minnesota State Legislature.

Any site developed or improved by the Project shall display a sign, in a form approved by the State, stating the same information.

4.0 CONTACT PERSONS

The State's authorized agent for the purpose of administration of this Grant is:

Pat Lynch, FDR Hydrologist
Minnesota DNR Division of Ecological and Water Resources
500 Lafayette Road
St. Paul, MN 55155-4032
(651) 259-5691

The Grantee's authorized agent for the purpose of administration of this Grant is:

Keith Hamre, Director of Planning and Construction Services
City of Duluth
407 City Hall
Duluth, MN 55802
(218) 730-5480

5.0 COSTS

5.1 ELIGIBLE COSTS

Eligible costs are those costs directly incurred by the Grantee that are solely related to and necessary for producing the work products described in the Project Plan. Eligible costs may include the following:

- 5.1.1 Advertising costs for bids and proposals;
- 5.1.2 Capital expenditures for facilities, equipment and other capital assets as expressly approved in the Project Plan;
- 5.1.3 Materials and supplies;
- 5.1.4 Architectural and engineering services;
- 5.1.5 Construction management and inspection services;
- 5.1.6 Surveys and soil borings;
- 5.1.7 Land acquisition and title clearing costs;
- 5.1.8 Attorney fees solely related and necessary to accomplish the Project, as determined by the State;
- 5.1.9 Project expenses incurred after July 1, 2012;
- 5.1.10 Actual construction of the Project; or
- 5.1.11 Travel, lodging and meal expenses of persons involved in the Project in the same manner and in no greater amount than provided for in the current "Commissioner's Plan" promulgated by the Commissioner of Employee Relations.

Certain other types of costs may be eligible provided that they are (1) directly incurred by the Grantee; (2) are solely related to, and necessary for, producing the work products described in the Project Plan; and (3) have prior written approval of the State. Any cost not defined as an eligible cost or not included in the Project Plan shall not be paid from State funds committed to the Project.

5.2 NON-ELIGIBLE COSTS

Non-eligible costs for reimbursement means all costs not defined as eligible costs, including but not limited to the following:

- 5.2.1 Any costs incurred before July 1, 2012;
- 5.2.2 Fund raising;
- 5.2.3 Taxes, except sales tax on goods and services;
- 5.2.4 Insurance, except title insurance;
- 5.2.5 Attorney fees not necessary to accomplish the Project;
- 5.2.6 Loans, grants, or subsidies to persons or entities for development;
- 5.2.7 Bad debts or contingency funds;
- 5.2.8 Interest;
- 5.2.9 Expenses eligible for federal reimbursement
- 5.2.10 Lobbyists; and
- 5.2.11 Political contributions

6.0 PAYMENT OF GRANT MONIES

6.1 REIMBURSEMENT

To obtain reimbursement for eligible costs under this Grant, the Grantee shall provide the State with invoices and evidence that the portion of the Project for which payment is requested has been satisfactorily completed. All invoices shall be sent by mail or e-mail to the

person designated in Section 4.0 herein above. Invoices must be received by the State within thirty (30) days after the completion of the Project or the expiration of this Grant as set forth in Section 11.1 herein below, whichever occurs first. Invoices received after that date will not be eligible for reimbursement. The State's authorized agent has final authority for acceptance of Grantee's services, determination as to whether the expenditures are eligible for reimbursement under this Grant, and verification of the total amount requested. The Grantee shall not receive payment for work found by the State to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation. At its discretion, the State may withhold up to 10% of the total grant award until the State has determined that the Grantee has satisfactorily fulfilled all of the terms of this Grant.

6.2 REIMBURSEMENT SCHEDULE

It is required that invoices be submitted, at a minimum, at the close of each state fiscal year which is July 1 – June 30. If expenses are extensive, reimbursement requests may be submitted monthly or quarterly. Please itemize the eligible expenses by the month of occurrence, not liquidation. If invoices are not received in this format, it could delay receipt of payment.

7.0 ACCOUNTING AND AUDIT

The Grantee shall maintain books, records, documents, and other evidence pertaining to the costs and expenses of implementing this Grant to the extent and in such detail that will accurately reflect the total cost of the Project. The Grantee shall use generally accepted accounting principles. All records shall be retained for a minimum of six (6) years after completion of the Project. The State, its representative, or the legislative auditor shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices relevant to the Grant.

8.0 AMERICANS WITH DISABILITY ACT AND HUMAN RIGHTS

The Grantee, in the conduct of the Project, shall comply with the Americans with Disabilities Act of 1990 (P.L. 100-336), Minnesota Statutes Chapter 363 (the Minnesota Human Rights Act), and Minnesota Statutes, Sections 181.59-60 and all applicable rules and subsequent amendments.

9.0 WORKERS' COMPENSATION

The Grantee in the conduct of the Project shall comply with Minnesota Statutes, Section 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.

10.0 LIABILITY

The Grantee agrees to indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, arising from the performance of this Grant by the Grantee, its agents, contractors or employees. This clause shall not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this Grant.

11.0 TERM

11.1 EFFECTIVE DATE

This Grant shall become legally effective upon such date as it is executed by the Department of Natural Resources and shall remain in effect until June 30, 2014, or until all obligations set forth in this Grant have been satisfactorily fulfilled, whichever occurs first.

11.2 TERMINATION

This Grant may be terminated by the State or the Grantee at any time with or without cause upon thirty (30) days' written notice to the other party. In the event of such a cancellation, the Grantee shall be entitled to payment determined on a pro rata basis for work or services satisfactorily performed.

11.3 AMENDMENTS

Any amendment to this Grant must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

12.0 ASSIGNMENT

The Grantee shall neither assign nor transfer any rights or obligations under this agreement without the prior written consent of the State.

13.0 ANTI-TRUST PROVISION

The Grantee hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Grant resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

14.0 CHOICE OF LAW

All matters relating to the performance of this Grant shall be controlled by and determined in accordance with the laws of the State of Minnesota.

15.0 DATA DISCLOSURE

Under Minnesota Statutes, Section 270.66, 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.

IN WITNESS WHEREOF, the parties have caused this Grant Agreement to be duly executed intending to be bound thereby.

1. STATE ENCUMBRANCE VERIFICATION

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

By: Felicia Barnes

Date: 1/16/13

Contract No.: 3000032161/57426

2. GRANTEE

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

3. STATE OF MINNESOTA ACTING BY AND THROUGH ITS COMMISSIONER OF NATURAL RESOURCES

By: _____

Title: _____

Date: _____

Distribution:
Agency
Grantee
State's Authorized Representative - Photo Copy

Exhibit A

The Grantee shall be responsible for the acquisition of real property and disposal of structures at properties described in table below, per information contained in the *Minnesota Recovers Task Force Request for Assistance*, dated October 24, 2012. Funds under this award may also be utilized to meet the local match for structures and properties acquired with federal funds through the Federal Emergency Management Agency HMGP program. Any properties considered under this grant award that are eligible for acquisition under the federal HMGP program must exhaust the federal funding available before utilizing state funds.

State Cost Share	Address	Special Flood Hazard Area (Flood Map)	Year Built
25%	1 131st Ave W Duluth 55808	Fringe	1928
25%	102 131st Ave W Duluth 55808	Fringe	1920
25%	13002 W 3rd St Duluth	Fringe	1928
25%	1126 W 2nd St Duluth 55806	Floodway	1891
25%	12304 State Hwy 23 Duluth 55808	Floodway	1921
25%	12810 Water Street Duluth	Floodway	1960
25%	13001 Cass St Duluth	Floodway	1958
25%	13002 Water St Duluth	Floodway	1926
25%	1622 Waverly St Duluth	Floodway	1959
25%	32 S 59th Ave W Duluth 55807	Floodway	1914
100%	13225 W 4th St Duluth 55808	No	2011
100%	1616 E Skyline Pkwy Duluth 55805	No	1938
100%	12 S 59th Ave W Duluth 55807	No	1908
100%	14 S 59th Ave W Duluth 55807	No	1899
100%	18 S 59th Ave W Duluth 55807	No	1902
100%	1101 97th Ave W Duluth 55808	No	1916
100%	216 E House St Duluth 55808	No	1913
100%	306 N 63rd Ave W Duluth	No	1913
100%	326 S 17th Ave E Duluth	No	1891
100%	3414 W 1st St Duluth 55807	No	1908
100%	4441 W Grand Ave, Duluth	No	1962

The Grantee shall acquire title to property, remove all structures, disconnect utilities, and restore topsoil and landscaping. All demolition material is to be disposed of in compliance with Federal, State, and local standards. Property acquired by the Grantee shall remain in permanent public ownership. The Grantee agrees that the land shall be used only for purposes compatible with open space, recreational, or wetlands management practices per State and local floodplain and shoreland management ordinances.

All project expenses not identified as being related to work outlined above, and as subsequently amended in Exhibit A of this Agreement, must be approved by the State in writing prior to the Grantee incurring said expense.