

STATE OF MINNESOTA JOINT POWERS AGREEMENT

This agreement is between the State of Minnesota, acting through its Commissioner of Natural Resources ("State") and City of Saint Paul, Parks and Recreation Department ("Governmental Unit").

Recitals

Under Minnesota Statute § 471.59, subdivision 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of a fishing pier on Lake Phalen in Saint Paul, Minnesota and will work jointly with the City of Saint Paul under this agreement to meet this objective.

Agreement

1 Term of Agreement

- 1.1 **Effective date:** March 11, 2015, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** June 30, 2016, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2 Agreement between the Parties

The DNR and the City of Saint Paul agree to cooperate and use their reasonable efforts to ensure prompt implementation of the various provisions of this Agreement and to, in good faith, undertake resolution of any dispute in an equitable and timely manner.

The City of Saint Paul shall:

- A. Provide for the labor to fully assemble the fishing pier.
- B. Provide for the lumber and supplies required to assemble the decking and railing on the fishing pier.
- C. Perform and/or pay for any of the work required to properly maintain the fishing pier.
- D. Provide to the DNR, a copy of the City of Saint Paul resolution authorizing execution of this Agreement.
- E. Provide the necessary staff and heavy equipment to install the fishing pier.

The Department of Natural Resources shall:

- A. Purchase the fishing pier components consisting of brackets, floats, and spud poles under separate requisition.
- B. Coordinate to deliver or arrange pickup of the fishing pier components to designated City facility.
- C. Assist in the installation of the fishing pier with City of Saint Paul staff.

3 Payment

There is no monetary obligation to the State under this agreement.

4 Authorized Representatives

The State's Authorized Representative is Timothy J. DeBates, East Metro Area Fisheries Supervisor, or his successor.

The Governmental Unit's Authorized Representative is Michael Hahm, Parks and Recreation Director, 25 West Fourth Street, Suite 400, Saint Paul, MN 55102.

5 Assignment, Amendments, Waiver, and Contract Complete

- 5.1 **Assignment.** The Governmental Unit may neither assign nor transfer any rights or obligations under this 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 agreement, or their successors in office.

- 5.2 **Amendments.** Any amendment to this 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 agreement, or their successors in office.
- 5.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or its right to enforce it.
- 5.4 **Contract Complete.** This agreement contains all negotiations and agreements between the State and the Governmental Unit. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

6 Indemnification

In the performance of this contract by the Governmental Unit, or Governmental Unit's agents or employees, the Governmental Unit must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the state, to the extent caused by Governmental Unit's:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Governmental Unit may have for the State's failure to fulfill its obligation under this contract.

7 State Audits

Under Minnesota Statute § 16C.05, subdivision 5, the Governmental Unit's books, records, documents, and accounting procedures and practices relevant to this 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 agreement.

8 Government Data Practices

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

If the Governmental Unit receives a request to release the data referred to in this Clause, the Governmental Unit must immediately notify the State. The State will give the Governmental Unit instructions concerning the release of the data to the requesting party before the data is released.

9 Venue

Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

10 Termination

10.1 **Termination.** The State or the Governmental Unit may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

10.2 **Termination for Insufficient Funding.** The State may immediately terminate this 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 covered here. Termination must be by written or fax notice to the Governmental Unit. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Governmental Unit 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 Governmental Unit notice of the lack of funding within a reasonable time of the State's receiving that notice.

11 E-Verify Certification (In accordance with Minn. Stat. §16C.075)

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

1. STATE ENCUMBRANCE VERIFICATION

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

Signed: _____

Date: _____

CFMS Contract No. A-_____

2. GOVERNMENTAL UNIT

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

By: _____

Date: _____

3. STATE AGENCY

By: _____

(with delegated authority)

Title: _____

Date: _____

4. COMMISSIONER OF ADMINISTRATION

As delegated to Materials Management Division

By: _____

Date: _____

Title: _____

Distribution:

Agency

Governmental Unit

State's Authorized Representative - Photo Copy