

# STATE OF MINNESOTA GRANT CONTRACT

This grant contract is between the State of Minnesota, acting through its commissioner of Administration ("State") and Como Park Zoo and Conservatory, 1225 Estabrook Drive, St. Paul, MN ("Grantee").

## Recitals

1. Under Minnesota Laws, 2011, 1<sup>st</sup> Special Session, Chapter 6, Article 4, Section 2, Subd. 6, the State is empowered to enter into this grant.
2. The State is providing support to Como Park Zoo and Conservatory for programmatic development.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State.

## Grant Contract

### 1 Term of Grant Contract

- 1.1 **Effective date:** July 1, 2011. No payments will be made until July 1, 2011, or the date the State obtains all required signatures under Minnesota Statutes §16B.98, Subd. 5, whichever is later. Per Minnesota Statutes §16B.98, Subd. 7, no payments will be made to the Grantee until this grant contract is fully executed.
- 1.2 **Expiration date:** June 30, 2013, 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 contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15 Data Disclosure.

### 2 Grantee's Duties

The Grantee, who is not a state employee, will perform the duties in compliance with Minnesota Laws, 2011, 1<sup>st</sup> Special Session, Chapter 6, Articles 4 and 5, that are specified in Exhibit A: Work Plan and Budget, which is attached and incorporated into this grant contract.

Modifications greater than 10 percent of any line item in the most recently approved budget in Exhibit A requires prior approval from the State and must be indicated on submitted reports.

Modifications equal to or less than 10 percent of any line item are permitted without prior approval from the State provided that such modification is indicated on submitted reports and that the total obligation of the State for all compensation and reimbursements to Grantee shall not exceed \$396,000.

### 3 Time

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

The grantee is required to perform all of the duties cited within clause two "Grantee's Duties" of this agreement within the grant period. The State is not obligated to extend the grant period past the date specified under Minnesota Laws, 2011, 1<sup>st</sup> Special Session, Chapter 6, Article 4, Section 2, Subd. 6.

### 4 Consideration and Payment

- 4.1 **Consideration.** The State will pay for all services performed by the Grantee under this grant contract as follows:

- 1) **Compensation.** The Grantee will be paid according to the payment schedule detailed in Section 4.2 of this agreement, with total obligation to the Grantee not to exceed \$396,000.

The Grantee must comply with the Minnesota Constitution, article XI, section 15, and may not substitute money received from a legacy fund for a traditional source of funding.

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.

- 2) **Contracting and Bidding Requirements.**

Any services and/or materials that are expected to cost \$20,000 or more must undergo a formal notice and bidding process.

Any services and/or materials that are expected to cost between \$10,000 and \$19,999 must be scoped out in writing and offered to a minimum of three (3) bidders.

Any services and/or materials that are expected to cost between \$5,000 and \$9,999 must be competitively based on a minimum of three (3) verbal quotes.

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.

- 3) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract provided that the Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Minnesota Management and Budget, which can be found at [www.mmb.state.mn.us/doc/comp/contract/CommissionersPlan.pdf](http://www.mmb.state.mn.us/doc/comp/contract/CommissionersPlan.pdf). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.
- 4) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$396,000.

#### 4.2. **Payment**

The State will promptly pay the Grantee after the Grantee presents a quarterly invoice and expenditure report and the State's Authorized Representative accepts the invoice and expenditure report. Invoices and reports must be submitted timely and according to the following schedule and as outlined in section 5 of this agreement.

##### **State Fiscal Year 2012 (July 1, 2011 to June 30, 2012)**

Payment 1 for eligible expenses July 1 to September 30, 2011: Available October 1, 2011, or the date the State obtains all required signatures under Minnesota Statutes §16B.98, Subd. 5, or the date the State has accepted the invoice and expenditure report, whichever is later.

Payment 2 for eligible expenses October 1 to December 31, 2011: Available January 1, 2011, or the date the State has accepted the invoice and expenditure report, whichever is later.

Payment 3 for eligible expenses January 1 to March 31, 2012: Available April 1, 2012, or the date the State has accepted the invoice and expenditure report, whichever is later.

Payment 4 for eligible expenses April 1 to June 30, 2012: Available July 1, 2013, or the date the State has accepted the invoice and expenditure report, whichever is later.

**State Fiscal Year 2012 (July 1, 2012 to June 30, 2013)**

Payment 1 for eligible expenses July 1 to September 30, 2012: Available October 1, 2012, or the date the State has accepted the invoice and expenditure report, whichever is later.

Payment 2 for eligible expenses October 1 to December 31, 2012: Available January 1, 2013, or the date the State has accepted the invoice and expenditure report, whichever is later.

Payment 3 for eligible expenses January 1 to March 31, 2013: Available April 1, 2013, or the date the State has accepted the invoice and expenditure report, whichever is later.

Payment 4 for eligible expenses April 1 to June 30, 2013: Available July 1, 2013, or the date the State has accepted the invoice and expenditure report, whichever is later.

**5 Conditions of Payment**

All services provided by the Grantee under this grant contract 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.

The Grantee must compile and submit all information for funded projects or programs, including proposed measurable outcomes and all other items required under Minnesota Laws, 2011, 1<sup>st</sup> Special Session, Chapter 6, Article 5, Section 5, to the Legislative Coordinating Commission as soon as practicable or by January 15 of the applicable fiscal year, whichever comes first.

All payments and expenditures for the fiscal year must be accounted for annually in a financial report to the State by August 1.

Under Minnesota Laws, 2011, 1<sup>st</sup> Special Session, Chapter 6, Article 5, Section 7, Subd. 3. a recipient of money from a legacy fund must not use the money to fund a trust, endowment, or similar instrument unless they meet the requirements listed in Article 5, Section 7, Subd. 3.

**6 Authorized Representative**

The State's Authorized Representative is Laurie Beyer-Kropuenske, Director of Community Services, Department of Administration, 201 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155, 651-201-2501, 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 contract. 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 Michelle Furrer, Director/Campus Manager, Como Park Zoo and Conservatory, 1225 Estabrook Drive, St. Paul, MN 55103, 651-487-8201. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

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

**7.1 Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this grant

contract 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 contract, or their successors in office.

7.2 **Amendments.** Any amendment to this grant contract 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.

7.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or its right to enforce it.

7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, 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 contract 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 contract.

## **9 State Audits**

Under Minnesota Statutes § 16B.98, Subd. 8, the Grantee's books, records, documents, and accounting procedures and practices relevant to this grant contract 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 the grant contract end date, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

## **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, Minnesota Statutes Chapter 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minnesota Statutes § 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**

The Grantee retains ownership of all intellectual property created with these grant funds.

## **11 Workers' Compensation**

The Grantee certifies that it is in compliance with Minnesota Statutes § 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 Publicity and Endorsement**

12.1 **Publicity.** Any publicity regarding the subject matter of this grant contract must comply with Minnesota Laws, 2011, 1<sup>st</sup> Special Session, Chapter 6, Article 5, Section 5.

12.2 **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 contract. Venue for all legal proceedings out of this grant contract, 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 contract 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 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.

**16 In the Event of a Lawsuit**

An appropriation or portion of an appropriation from a legacy fund is canceled to the extent that a court determines that the appropriation unconstitutionally substitutes for a traditional source of funding.

**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 contract No. \_\_\_\_\_

**3. STATE AGENCY**

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. GRANTEE**

*The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_