

# STATE OF MINNESOTA GRANT CONTRACT

This grant contract is between the State of Minnesota, acting through its PERPICH CENTER FOR ARTS EDUCATION ("STATE") and DULUTH PUBLIC SCHOOLS, an independent contractor, not an employee of the State of Minnesota, address: ISD 709 215 North First Avenue East, Duluth MN 55802 ("GRANTEE").

## Recitals

1. Under Minn. Stat. 15.061 the State is empowered to enter into this grant.
2. Under Minn. Stat. 129.10 Subd C the Perpich Center for Arts Education is empowered to enter into this grant.
3. The State is in need of high quality, professional development opportunities in the arts for MN K-12 educators, teaching artists, students and administrators to improve education statewide.
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. Pursuant to Minnesota Statutes §16B.98 Subdivision 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

## Grant Contract

### 1 Term of Grant Contract

- 1.1 **Effective date:** March 26, 2012 or the date the State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2, whichever is later.

**The Grantee must not begin work under this grant contract until this contract is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.**

- 1.2 **Expiration date:** June 01, 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:

Serve as a regional site by providing arts education and professional development experiences that serve their regional area. Goals include:

- Increasing teaching and learning opportunities throughout the state;
- Tailoring professional development to targeted and area needs;
- Responding expeditiously to emerging or changing needs;
- Allowing for better statewide distribution of funds and professionals
- Expanding public awareness of the impact of arts education; and
- Strengthening partnerships, statewide

The regional site is required to participate in training that includes all aspects of professional learning communities – planning, curricular development, collaboration with other schools/districts, identification and sharing of best practices, developing art areas, working with regional arts organizations or partners and conducting regional workshops.

Professional development opportunities may include, but are not limited to: implementation of standards-based education as relates to arts education. Curricular examples from work done at the regional site and completed in the current school year should be included in each year-end final report.

### 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.

### 4 Consideration and Payment

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

(a) **Compensation.** The Grantee will be paid at the following rate(s):

- a. FY 12: Sixty Thousand Dollars and Zero Cents (\$60,000.00)
- b. FY 13: Seventy Five Thousand Dollars and Zero Cents (\$75,000.00)

(b) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will not exceed \$ Zero Dollars and Zero Cents (\$0.00); 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 (MMB). 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.

(c) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed One Hundred Thirty Five Thousand Dollars and Zero Cents (\$135,000.00).

#### 4.2. Payment

(a) **Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services.

Regional partners of the Perpich Center will receive funds prior to the initiation of programs in order to enable school districts to plan, prepare and distribute services in coordination with local school district(s) policies and reimbursement programs. This will result in more efficient accounting and programming services. The Perpich Center is dedicated to its statewide mission and designates this School District as a partner in developing programs for arts education. Invoices must be submitted timely and according to the following schedule:

Upon final contract signature: \$60,000.00; August 01, 2012: \$61,500.00; June 01, 2013: \$13,500.00 upon submission and acceptance of final reporting materials that are due for review by May 15, 2013.

(b) **Federal funds.** (Where applicable, if blank this section does not apply) Payments under this grant contract 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 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.

## **6 Authorized Representative**

The State's Authorized Representative is Susan H. Mackert, Executive Director, Perpich Center for Arts Education, 6125 Olson Memorial Highway, Golden Valley MN 55422, 763-591-4700, 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 William Gronseth, ISD #709, 215 North First Avenue East, Duluth MN 55802, 218-336-8700. 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 shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office. .

7.2 **Amendments.** Any amendments 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 the State's 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 Minn. Stat. §16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction 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, 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, Minn. Stat. Ch. 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 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. The Grantee's response to the request shall comply with applicable law.

## **10.2. *Intellectual Property Rights***

- (A) The State shall own all rights, title and interest in all of the materials conceived or created by the Grantee, or its employees or sub grantees, either individually or jointly with others and which arise out of the performance of and are paid for under this grant contract, including and inventions, reports, studies, designs, drawings, specifications, notes, documents software and documentation, computer based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form ("Materials").

The Grantee hereby assigns to the State all rights, title and interest to the Materials. Grantee shall, upon request of the State, execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights, patents or other forms of protection provided by law for the Materials. The Materials created under this grant contract by the Grantee, its employees or sub grantees, individually or jointly with others, shall be considered "works for hire" as defined by the United States Copyright Act.

All of the Materials, whether in paper, electronic, or other form, shall be remitted to the State by the Grantee, its employees and any sub grantees, shall not copy reproduce, allow or cause to have the Materials copied, reproduced or used for any purpose other than performance of the Grantee's obligations under this grant contract without prior written consent of the State's Authorized Representative.

- (B) Grantee represents and warrants that Materials produced or used under this Grant Contract do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. Grantee shall indemnify and defend the State, at 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 parts of the Materials infringe upon the intellectual property rights of another. Grantee shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to reasonable attorneys' fees arising out of this Grant Contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or actions arises, or in Grantee's or the State's opinion is likely to arise, Grantee shall at the State's discretion, either procure for the State the right or license to continue using the Materials at issue or replace or modify the allegedly infringing Materials. This remedy shall be in addition to and shall not be exclusive to 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 Publicity and Endorsement**

12.1 **Publicity.** Any publicity regarding the subject matter of this grant contract 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 contract.

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**

14.1 **Termination by the State.** The State may immediately terminate this grant contract 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.

14.2 **Termination for Cause.** The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 **Termination for Insufficient Funding.** The State may immediately terminate this grant contract if:

- a) It does not obtain funding from the Minnesota Legislature
- b) 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 Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee 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 contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

### 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.

**1. STATE ENCUMBRANCE VERIFICATION**

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

Signed: \_\_\_\_\_

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

SWIFT Contract/PO No(s).\_\_\_\_\_

**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: \_\_\_\_\_

**3. STATE AGENCY**

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

(with delegated authority)

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

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

Distribution:

Agency

Grantee

State's Authorized Representative - Photo Copy