
GENERAL FUND

GRANT AGREEMENT
CONSTRUCTION GRANT
for the
NORSHOR THEATRE
PROJECT

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GENERAL FUND

GRANT AGREEMENT
CONSTRUCTION GRANT
for the
NorShor Theatre
PROJECT

THIS AGREEMENT shall be effective as of May 21, 2014, and is between the Duluth Economic Development Authority, an economic development authority (the “Grant Recipient”), and the Minnesota Department of Employment and Economic Development (the “State Entity”).

RECITALS

A. Under the provisions contained in Minnesota Laws 2014, Chapter 295, Section 10, Subdivision 3, the State of Minnesota has allocated \$6,950,000.00, which is to be given to the Grant Recipient as a grant to assist it in the design, construct, furnish, and equip certain public improvements, including skyway access from adjacent public parking, interior circulation, street and utility upgrades, the connection between skyway and street levels, handicapped access, and the restoration of the lobby, entrance, and marquee, as part of the restoration and to enhance and provide the public access to the historic NorShor Theatre; and

B. The monies allocated to fund the grant to the Grant Recipient are appropriated money from the State of Minnesota’s general fund; and

C. The Grant Recipient has selected Sherman Associates Development LLC to develop the Project (as hereinafter defined), which will be financed with a combination of sources, including the State Grant and a New Market Tax Credit loan (NMTC Loan), the terms of which NMTC Loan require that the Real Property and Facility (as hereinafter defined) be owned by a Qualified Active-Low-Income Community Business (QALICB) during the tax credit period.

D. Under the terms of the Development Agreement between the Grant Recipient and NorShor Theatre LLC, as QALICB (the Developer), the Grant Recipient will convey its interest in the Real Property and Facility to the Developer, to be operated as a community theater and performing arts venue for the life of the Facility.

E. If the Developer conveys its interest in the Real Property and Facility during the term of this Agreement, the Development Agreement will require the Developer to enter into an agreement with any successor or assign to further cause the Real Property and Facility to be operated as a community theater and performing arts venue for the term specified in Recital D. Pursuant to the terms of a Development Agreement, the Public Entity will impose upon the Developer the obligation to operate the Project as described in Recital D, above, which shall be imposed as a covenant running with the land with regard to the hereinafter-described Real Property and Facility.

F. The Grant Recipient and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Grant Recipient.

IN CONSIDERATION of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

Article I DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

“Advance(s)” – means an advance made or to be made by the State Entity to the Grant Recipient and disbursed in accordance with the provisions contained in Article III hereof.

“Agreement” - means this General Funds Grant Agreement Construction Grant for the NorShor Theatre Project.

“Architect”, if any - means Toltz, King, Duvall, Anderson, and Associates, d/b/a TKDA, which will administer the Construction Contract Documents on behalf of the Grant Recipient.

“Commissioner of Management and Budget” - means the State of Minnesota acting through its Commissioner of Management and Budget, and any designated representatives thereof.

“Completion Date” – means June 30, 2018 the date of projected completion of the Project.

“Contractor” - means any person engaged to work on or to furnish materials and supplies for the Project including, if applicable, a general contractor.

“Construction Contract Documents” - means the document or documents, in form and substance acceptable to the State Entity, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders or supplements thereto, which collectively form the contract concerning the Project and which provide for the completion of the Project on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Draw Requisition” - means a draw requisition that the Grant Recipient, or its designee, will submit to the State Entity when an Advance is requested, and which is referred to in Section 4.02.

“Event of Default” - means those events delineated in Section 2.05.

“Facility”, if applicable, - means NorShor Theatre, which is located, or will be constructed and located, on the Real Property.

“Grant” - means a grant of monies from the State Entity to the Grant Recipient in an amount of \$6,950,000.00.

“Grant Recipient” - means the Duluth Economic Development Authority, an economic development authority.

“Inspecting Engineer”, if any - means the State Entity’s construction inspector, or its designated consulting engineer.

“Project” - means the acquisition of an interest in the Real Property and, if applicable, the Facility, along with the performance of those activities indicated in Section 2.03.

“Public Improvements” - means those improvements authorized to be paid pursuant to Minnesota Laws, 2014, Chapter 295, Section 10, Subdivision 3.

“Real Property” - means the real property located in the County of St. Louis, State of Minnesota, legally described in **Attachment I**.

“State Entity” - means the Minnesota Department of Employment and Economic Development.

“Useful Life of the Real Property and, if applicable, the Facility” – means the term set forth in Section 2.04.S. of this Agreement.

Article II GRANT

Section 2.01 **Grant of Monies.** The State Entity shall issue the Grant to the Grant Recipient and disburse the proceeds in accordance with the provisions of this Agreement. The Grant is not intended to be a loan.

Section 2.02 **Use of Grant Proceeds.** The Grant Recipient shall use the Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities:

(Check all appropriate boxes.)

- ☐ Acquisition of fee simple title to the Real Property;
- ☐ Acquisition of a leasehold interest in the Real Property;
- ☐ Acquisition of an easement on the Real Property;

- ☐ Improvement of the Real Property,
- ☐ Acquisition of the Facility,
- ☐ Improvement of the Facility,
- ☐ Renovation or rehabilitation of the Facility,
- ☐ Construction of the Facility, or
- ☒ Improvement, Renovation, Rehabilitation, and Construction of the Public Improvements.

Section 2.03 **Operation of the Real Property and Facility.** The Grant Recipient shall use the Grant to fund the design, construction, furnishing, and equipping of the Public Improvements as authorized by the State Program Enabling Legislation and cause it to be operated for such other use as the Minnesota legislature may from time to time designate.

Section 2.04 **Grant Recipient Representations and Warranties.** The Grant Recipient further covenants with, and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. This Agreement, and all other documents referred to herein are the legal, valid and binding obligations of the Grant Recipient enforceable against the Grant Recipient in accordance with their respective terms.

C. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, and all other documents referred to herein.

D. It has made no material false statement or misstatement of fact in connection with its receipt of the Grant, and all of the information it previously submitted to the State Entity or which it will submit to the State Entity in the future relating to the Grant or the disbursement of any of the Grant is and will be true and correct.

E. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, the Facility, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, or any document referred to herein, or to perform any of the acts required of it in such documents.

F. Neither the execution and delivery of this Agreement, or any document referred to herein, nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

G. The contemplated use of the Real Property and, if applicable, the Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

H. The Project was, or will be, completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

I. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

J. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, the Facility in the manner specified in Section 2.03 have been, or will be, obtained.

K. It will ensure the Real Property and, if applicable, the Facility, will be operated as a community theater and performing arts venue for the life of the Facility and in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, the Facility.

L. It has, or will acquire, the following interest in the Real Property and, if applicable, the Facility, and, in addition, will possess all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, the Facility in the manner specified in Section 2.03:

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property.

☒ Fee simple ownership of the Real Property.

- ☐ A Real Property/Facility Lease for the Real Property, in form and substance acceptable to the State Entity, for a term of at least 125% of the Useful Life of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity.

(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

- ☐ An easement for the Real Property, in form and substance acceptable to the State Entity, for a term of at least 125% of the Useful Life of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity.

(If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

Ownership Interest in, if applicable, the Facility.

- ☐ Fee simple ownership of the Facility.

- ☐ A Real Property/Facility Lease for the Facility, in form and substance acceptable to the State Entity, for a term of at least 125% of the Useful Life of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity.

(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

- ☐ Not applicable because there is no Facility.

and such interests are or will be subject only to those easements, covenants, conditions and restrictions that will not materially interfere with the completion of the Project and the intended operation and use of the Real Property and, if applicable, the Facility, or those easements, covenants, conditions and restrictions which are specifically consented to, in writing, by the State Entity.

N. It has complied with the matching funds requirement, if any, contained in Section 5.23.

O. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the Grant to complete and fully pay for the Project.

P. The Project will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and will be situated entirely on the Real Property.

Q. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its conduct of work on the Project.

R. It will furnish to the State Entity as soon as possible and in any event within 7 calendar days after the Grant Recipient has obtained knowledge of the occurrence of each Event of Default, or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default, or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default, and the action which the Grant Recipient proposes to take with respect thereto.

S. The Useful Life of the Real Property and, if applicable, Facility is 20 years.

T. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested in writing by either the State Entity or the Commissioner of Management and Budget.

Section 2.05 Event(s) of Default. The following events shall, unless waived in writing by the State Entity, constitute an Event of Default under this Agreement upon the State Entity giving the Grant Recipient 30 days written notice of such event, and the Grant Recipient's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Grant Recipient is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months. Notwithstanding the foregoing, any of the following events that cannot be cured shall, unless waived in writing by the State Entity, constitute an Event of Default under this Agreement immediately upon the State Entity giving the Grant Recipient written notice of such event.

A. If any representation, covenant, or warranty made by the Grant Recipient herein, in any Draw Requisition, or in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to make any Advance, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Grant Recipient fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, or any other document referred to herein.

Section 2.06 Remedies. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the State Entity, the State Entity or the Commissioner of Management and Budget may enforce any or all of the following remedies.

A. The State Entity may refrain from disbursing the Grant; provided, however, the State Entity may make Advances after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. The Commissioner of Management and Budget, as a third party beneficiary of this Agreement, may demand that the portion of the Grant already disbursed to the Grant Recipient be returned to it, and upon such demand the Grant Recipient shall return such portion to the Commissioner of Management and Budget.

C. Either the State Entity or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the State Entity or the Commissioner of Management and Budget would otherwise possess.

If the Grant Recipient does not repay any portion of the amount specified in Section 2.06.B within 30 days of demand by either the State Entity or the Commissioner of Management and Budget, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Grant Recipient is entitled to receive from the State of Minnesota.

Section 2.07 Notification of Event of Default. The Grant Recipient shall furnish to both the State Entity and the Commissioner of Management and Budget, as soon as possible and in any event within 7 calendar days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Grant Recipient proposes to take with respect thereto.

Section 2.08 Term of Grant Agreement. This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Real Property and, if applicable, Facility is first used for the purpose set forth in Section 2.03 after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect.

Section 2.09 Modification and/or Early Termination of Grant. If the Project is not started on or before December 31, 2016, or such later date to which the Grant Recipient and the State Entity may agree in writing, then, the State Entity's obligation to fund the Grant shall terminate, and, in such event, (i) if none of the Grant has been disbursed by such date then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall also terminate and no longer be of any force or effect, and (ii) if some but not all of the Grant has been disbursed by such date then the State shall have no further obligation to provide any additional funding for the Grant and this Agreement shall remain in full force and effect but

shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date.

In addition, if all of the Grant has not been disbursed on or before the date that is 5 years from the effective date of this Agreement, then the State Entity's obligation to continue to fund the Grant shall terminate, and, in such event, (y) if none of the Grant has been disbursed by such date then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall also terminate and no longer be of any force or effect, and (z) if some but not all of the Grant has been disbursed by such date then the State Entity shall have no further obligation to provide any additional funding under the Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date.

In the event that the legislation that authorized the Grant is amended to increase or reduce the amount of the Grant or in any other way, then this Agreement shall be deemed to have been automatically modified in accordance with such amendment and the amount of the Grant shall also be automatically modified in accordance with such amendment.

Section 2.10 Effect of Event of Default. If an Event of Default occurs and the Grant Recipient is required to and does return the amount specified in Section 2.06.B to the Commissioner of Management and Budget, this agreement shall survive and remain in full force and effect.

Section 2.11 Excess Funds. If the full amount of the Grant and any matching funds referred to in Section 4.20 are not needed to complete the Project, then, unless language in the legislation that authorized the Grant indicates otherwise, the Grant shall be reduced by the amount not needed.

Article III DISBURSEMENT OF GRANT PROCEEDS

Section 3.01 The Advances. The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the Grant to the Grant Recipient from time to time in an aggregate total amount equal to the amount of the Grant. Provided, however, in accordance with the provisions contained in Section 2.08, the State Entity's obligation to make Advances shall terminate as of the date which occurs 5 years from the effective date of this Agreement even if all of the Grant has not been disbursed by such date.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 4.20. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 4.20 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1

$$\text{Cumulative Advances} \leq (\text{Program Grant}) \times (\text{percentage of matching funds, if any, required under Section 4.20 that have been disbursed})$$

Formula #2

$$\text{Cumulative Advances} \leq (\text{Program Grant}) \times (\text{percentage of Project completed})$$

Section 3.02 Draw Requisitions. Whenever the Grant Recipient desires a disbursement of a portion of the Grant, which shall be no more often than once each calendar month, the Grant Recipient shall submit to the State Entity a Draw Requisition duly executed on behalf of the Grant Recipient or its designee. Each Draw Requisition shall be submitted on or between the 1st day and the 15th day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days before the date the Advance is desired. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Grant Recipient and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Project site in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off the Project site will be made by the State Entity unless the Grant Recipient shall advise the State Entity, in writing, of its intention to so store materials prior to their delivery and the State Entity has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Grant Recipient shall submit to the State Entity such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

At the time of submission of the final Draw Requisition which shall not be submitted before substantial completion of the Project, including all landscape requirements and off-site utilities and streets needed for access to the Project and correction of material defects in workmanship or materials (other than the completion of punch list items) as provided in the Construction Contract Documents, the Grant Recipient shall submit to the State Entity: (i) such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and other approvals have been issued.

If on the date an Advance is desired the Grant Recipient has complied with all requirements of this Agreement and the State Entity approves the relevant Draw Requisition and receives a current construction report from the Inspecting Engineer recommending payment, then the State Entity shall disburse the amount of the requested Advance to the Grant Recipient.

Section 3.03 Additional Funds from Borrower. If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the Grant plus the amount of all other funds committed to the completion of the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project, then the State Entity may send written notice thereof to the Grant Recipient specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Grant Recipient agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the State Entity's notice.

Section 3.04 Conditions Precedent to Any Advance. The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

A. The State Entity shall have received a Draw Requisition for such Advance specifying the amount of funds being requested, which such amount when added to all prior requests for an Advance shall not exceed the maximum amount of the Grant set forth in Section 1.01.

B. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Grant Recipient has legal authority to and has taken all actions necessary to enter into this Agreement, and (ii) this Agreement is binding on and enforceable against the Grant Recipient.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that the Grant Recipient has sufficient funds to fully and completely pay for the entire Project and all other expenses that may occur in conjunction therewith.

D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Grant Recipient is in compliance with the matching funds requirements, if any, contained in Section 4.20.

E. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, the Facility and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and have been duly approved by the applicable municipal or governmental authorities having jurisdiction.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required building permits, other permits, bonds and licenses necessary for the completion of the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, the Facility in the manner specified in Section 2.03 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Project will be completed in a manner that will allow the Real Property and, if applicable, the Facility to be operated in the manner specified in Section 2.03.

I. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that the Grant Recipient has the ability and a plan to fund the program which will be operated on the Real Property and, if applicable, in the Facility.

J. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Construction Contract Documents are in place and are fully and completely enforceable.

K. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Project substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Project or supplied materials therefor, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents which name the State Entity and the Grant Recipient dual obligees thereunder, or such other evidence as may be acceptable to the Grant Recipient and the State Entity.

L. Reserved.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, of compliance with the provisions and requirements specified in Section 4.07 and all additional applicable provisions and requirements contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that: (i) the predesign package referred to in Section 4.07.B has been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 4.07.C have received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota Senate Capital Investment Committee have been notified pursuant to Section 4.07.G.

N. No determination shall have been made by the State Entity that the amount of funds committed to the completion of the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project, or if such a determination has been made and notice thereof sent to the Grant Recipient then the Grant Recipient has supplied or has caused some other entity to supply the necessary funds in accordance with Section 3.03, or to provide evidence acceptable to the State Entity that sufficient funds are available.

O. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

P. The Grant Recipient has supplied to the State Entity all other items that the State Entity may reasonably require.

Section 3.05 Construction Inspections. The Grant Recipient and the Architect, if any, shall be responsible for making their own inspections and observations of the Project, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the applicable contracts with such Contractors. If any work done or materials supplied by a Contractor are not satisfactory to the Grant Recipient and the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Grant Recipient shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer may conduct such inspections of the Project as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer are made and all certificates issued by the Inspecting Engineer will be issued solely for the benefit and protection of the State Entity, and the Grant Recipient will not rely thereon.

Article IV MISCELLANEOUS

Section 4.01 Records Keeping and Reporting. The Grant Recipient shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the completion of the Project and operation of the Real Property and, if applicable, the Facility, and compliance with the requirements contained in this Agreement, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of its books, records, papers, or other documents relevant to the Grant. The Grant Recipient shall use or cause the entity which is maintaining such books and records to use generally accepted accounting principles in the maintenance of such books and records, and shall retain or cause to be retained all of such books, records, documents and other evidence for a period of 6 years from the date that the Project is fully completed and placed into operation.

Section 4.02 **Inspection of Facility After Completion.** Upon reasonable request by the State Entity the Grant Recipient shall allow, and will require the Developer under the terms of the Development Agreement to allow, the State Entity to inspect the Real Property and, if applicable, the Facility.

Section 4.03 **Data Practices.** The Grant Recipient agrees with respect to any data that it possesses regarding the Grant, the Project, or the Real Property and, if applicable, the Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 4.04 **Non-Discrimination.** The Grant Recipient agrees to not engage in discriminatory employment practices in the completion of the Project, or operation or management of the Real Property and, if applicable, the Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Minn. Stat. Chapters 363A and 181 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 4.05 **Worker's Compensation.** The Grant Recipient agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181, Subd. 2 and 176.182 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, with respect to the completion of the Project, and the operation or management of the Real Property and, if applicable, the Facility.

Section 4.06 **Antitrust Claims.** The Grant Recipient hereby assigns to the State Entity and the Commissioner of Management and Budget all claims it may have for over charges as to goods or services provided in its completion of the Project, and operation or management of the Real Property and, if applicable, the Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 4.07 **Review of Plans and Cost Estimates.** The Grant Recipient agrees to comply with all applicable provisions and requirements contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Grant Recipient and the State Entity agree to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Grant Recipient shall provide all information that the State Entity may request in order for the State Entity to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project the Grant Recipient shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs

standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Grant Recipient shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota State Senate Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Grant Recipient must notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees of any significant changes to the program plan and cost estimates referred to in Section 4.07.C.

E. The program plan and cost estimates referred to in Section 4.07.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20, as they may be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 4.07.B and the program plan and cost estimates referred to in Section 4.07.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Grant Recipient shall just notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees that the work to be performed is ready to begin.

H. The Project must be: (i) completed in accordance with the program plan and cost estimates referred to in Section 4.07.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 4.07.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 4.07.C.

Provided, however, the provisions and requirements contained in this Section 4.07 only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, parking structures, park and ride facilities, bus rapid transit stations, light rail lines, passenger rail projects, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, trails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04, as it may be amended, modified or replaced from time to time, ice centers, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

Section 4.08 Prevailing Wages. The Grant Recipient agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the Real Property and, if applicable, Facility as intended by the Minnesota Legislature. By agreeing to this provision, the Grant Recipient is not acknowledging or agreeing that the cited provisions apply to the Project or to the operation of the Real Property and, if applicable, Facility.

Section 4.09 Liability. The Grant Recipient and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of both the State Entity and the Commissioner of Management and Budget is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Grant Recipient is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Grant Recipient, including but not limited to the indemnification provided under Section 4.10, is governed by the provisions contained in such Chapter 466.

Section 4.10 Indemnification by the Grant Recipient. The Grant Recipient shall bear all loss, expense (including attorneys' fees), and damage in connection with the completion of the Project or operation of the Real Property and, if applicable, the Facility, and agrees to indemnify and hold harmless the State Entity, the Commissioner of Management and Budget, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, the Commissioner of Management and Budget, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the State Entity, the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the completion of the Project or operation of the Real Property and, if applicable, the Facility, whether or not due to any act of omission or commission, including negligence of the Grant Recipient or any Contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission

(excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner of Management and Budget, and the State of Minnesota, their employees, servants or agents.

The Grant Recipient further agrees to indemnify, save, and hold the State Entity, the Commissioner of Management and Budget, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Grant Recipient, its officers, employees, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 4.03.

The Grant Recipient's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Grant Recipient, or subject to any exclusions from coverage in any insurance policy.

Section 4.11 Relationship of the Parties. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, nor shall the Grant Recipient be considered or deemed to be an agent, representative, or employee of either the State Entity, the Commissioner of Management and Budget, or the State of Minnesota in the performance of this Agreement, the completion of the Project, or operation of the Real Property and, if applicable, the Facility.

The Grant Recipient represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the completion of the Project and the operation and maintenance of the Real Property and, if applicable, the Facility. All personnel of the Grant Recipient or other persons while engaging in the performance of this Agreement, the completion of the Project, or the operation and maintenance of the Real Property and, if applicable, the Facility shall not have any contractual relationship with either the State Entity, the Commissioner of Management and Budget, or the State of Minnesota and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Grant Recipient, its officers, agents, contractors, or employees shall in no way be the responsibility of either the State Entity, the Commissioner of Management and Budget, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from either the State Entity, the Commissioner of Management and Budget, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 4.12 Notices. In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing, and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Grant Recipient at:
Duluth Economic Development Authority
City Hall
411 West First Street
Duluth, MN 55802
Attention: Wayne Parson, Chief Financial Officer

To the State Entity at:
Minnesota Department of Employment and Economic Development
First National Bank Building
332 Minnesota Avenue, Suite E200
St. Paul, MN 55101
Attention: Erin Welle

To the Commissioner of Management and Budget at:

Minnesota Department of Management and Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner of Management and Budget

Section 4.13 **Binding Effect and Assignment or Modification.** This Agreement shall be binding upon and inure to the benefit of the Grant Recipient and the State Entity, and their respective successors and assigns. Provided, however, that neither the Grant Recipient nor the State Entity may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement shall be binding on either the Grant Recipient or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 4.14 **Waiver.** Neither the failure by the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, in any one or more instances, to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 4.15 **Entire Agreement.** This Agreement, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Grant Recipient

and the State Entity, and there are no other agreements, either oral or written, between the Grant Recipient and the State Entity on the subject matter hereof.

Section 4.16 Choice of Law and Venue. All matters relating to the validity, construction, performance, or enforcement of this Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 4.17 Severability. If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 4.18 Time of Essence. Time is of the essence with respect to all of the matters contained in this Agreement.

Section 4.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 4.20 Matching Funds. The Grant Recipient must obtain and supply the following matching funds, if any, for the completion of the Project:

\$13,900,000.00

Any matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to complete or pay for the Project. The Grant Recipient shall supply to the Commissioner of Management and Budget whatever documentation the Commissioner of Management and Budget may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner of Management and Budget.

Section 4.21 Source and Use of Funds. The Grant Recipient represents to the State Entity and the Commissioner of Management and Budget that **Attachment II** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment II** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down among the following categories:

- (i) State funds including the Grant, identifying the source and amount of such funds.
- (ii) Matching funds, identifying the source and amount of such funds.
- (iii) Other funds supplied by the Grant Recipient, identifying the source and amount of such funds.
- (iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.
- (v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Grant Recipient must provide to the State Entity and the Commissioner of Management and Budget a detailed description of such conditions and what is being done to satisfy such conditions.

The Grant Recipient shall also supply whatever other information and documentation that the State Entity or the Commissioner of Management and Budget may request to support or explain any of the information contained in **Attachment II**.

The value of the Grant Recipient's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment II** if such ownership interest is being acquired and paid for with funds shown in such **Attachment II**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment II**.

The funds shown in **Attachment II** and to be supplied for the Project may, subject to any limitations contained in the legislation that authorized the Grant, be provided by either the Grant Recipient or the Developer.

Section 4.22 **Project Completion Schedule.** The Grant Recipient represents to the State Entity and the Commissioner of Management and Budget that **Attachment III** correctly and accurately delineates the projected schedule for the completion of the Project.

Section 4.23 **Third-Party Beneficiary.** The public program to be operated in conjunction with the Real Property and, if applicable, the Facility will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of Management and Budget, is and shall be a third-party beneficiary of this Agreement.

Section 4.24 **Applicability to Real Property and Facility.** This Agreement applies to the Grant Recipient's interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing before the term "Facility" is meant to indicate that this Agreement

will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Grant Recipient's interest in the Real Property.

Section 4.25 **E-Verification.** The Grant Recipient agrees and acknowledges that it is aware of Minn. Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such statute.

Section 4.26 **Jobs Reporting Requirements.** Pursuant to Minn. Stat. § 16A.633, Subd. 4, the Grant Recipient shall collect, maintain and, upon completion of the Project, provide the information indicated in **Attachment IV** of this Agreement, to the Commissioner of Management and Budget. The information must include, but is not limited to, the following: the number and types of jobs created by the Project, whether the jobs are new or retained, where the jobs are located and the pay ranges of the jobs.

Section 4.27 **Additional Requirements.** The Grant Recipient and the State Entity agree to comply with the following additional requirements.

A. **American-Made Steel.** Minnesota Laws 2014, Chapter 295, Section 21 (the "Act"), requires public entities receiving an appropriation of public money for a project in that Act to ensure those facilities are built with American-made steel, to the extent practicable. The Grant Recipient shall comply with this requirement, and shall furnish any documentation pursuant thereto reasonably requested by the State Entity.

B. Promptly upon execution of this Agreement, the Public Entity intends on conveying its interest in the Real Property and Facility, as described in Section 2.04.L, to the Developer upon the further terms and conditions of the Development Agreement.

(THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK)

IN TESTIMONY HEREOF, the Grant Recipient and the State Entity have executed this General Fund Grant Agreement – Construction Grant for the NorShor Theatre Project on the day and date indicated immediately below their respective signatures.

GRANT RECIPIENT:

Duluth Economic Development Authority, an economic development authority

<p>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.</p> <p>By _____ DEDA President</p> <p>Date _____</p> <p>By _____ DEDA Secretary</p> <p>Date _____</p>	<p>STATE OF MINNESOTA by and through the Department of Employment and Economic Development</p> <p>By _____ Deputy Commissioner</p> <p>Date _____</p> <p>ENCUMBERED: Department of Employment and Economic Development</p> <p>By _____</p> <p>Date Encumbered _____</p> <p>Individual certifies that funds have been encumbered as required by Minn. Stat. 16A.15 and 16C.05.</p>
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**Attachment I to Grant Agreement
LEGAL DESCRIPTION**

Tract B, Registered Land Survey 132, St. Louis County, Minnesota.

And

An egress easement over the following described property (2nd Ave. W. Fire code exit)

DRAFT

Attachment II to Grant Agreement
SOURCE AND USE OF FUNDS FOR THE PROJECT

Source of Funds

Use of Funds

<u>Identify Source of Funds</u>	<u>Amount</u>	<u>Identify Items</u>	<u>Amount</u>
State Funds		Ownership Acquisition and Other Items Paid for with Grant Funds	
Grant	\$6,950,000.00	Skywalk	\$926,396.00
Other State Funds		Circulation	\$5,196,562.00
State Historic Tax Credits	\$3,782,346.00	Street and Utility Upgrades	\$93,731.00
Legacy Grant	\$150,000.00	Marquee	\$97,306.00
Subtotal	\$10,882,346.00	Architect and Design	\$528,900.00
Matching Funds		Construction Management	\$107,105.00
Duluth Playhouse	\$2,300,000.00	Subtotal	\$6,950,000.00
Subtotal	\$2,300,000.00		
Other Public Entity Funds		Items Paid for with Non-Grant Funds	
DEDA TIF	\$1,700,000.00	Nonpublic Improvements	\$12,257,174.00
Federal Historic Tax Credits	\$3,079,221.00	Architect and Design	\$1,026,738.00
New Market Tax Credits	\$4,915,239.00	Construction Management	\$342,894.00
Subtotal	\$9,694,460.00	Land Acquisition	\$2,300,000.00
Loans		Subtotal	\$15,926,806.00
	\$		
Subtotal	\$		
Other Funds			
	\$		
	\$		
Subtotal	\$		
Prepaid Project Expenses			
	\$		
	\$		
Subtotal	\$		
TOTAL FUNDS	\$22,876,806.00	TOTAL PROJECT COSTS	\$22,876,806.00

Attachment III to Grant Agreement
PROJECT COMPLETION SCHEDULE

Closing: April 30, 2016

Commencement of Construction: June 1, 2016

Completion of Construction: June 1, 2018

DRAFT

Attachment IV to Grant Agreement JOBS REPORTING

(a) Pursuant to Minn. Stat. Sec. 16A.633, subd. 4, State Entity is required to report the number of jobs created or retained by the Project. To enable State Entity to comply with Minn. Stat. Sec. 16A.633, subd. 4, the Grant Recipient is required to report the number of jobs created or retained by the Project to State Entity as set forth below.

(b) The Grant Recipient shall require all of its contractors to report the information below to the Grant Recipient. The Grant Recipient shall then report to State Entity. Information can be recorded by State Entity in an Excel document that can be downloaded into the report by Minnesota Management and Budget. Each report must contain the following:

- (1) The name of the Project.
- (2) The State Entity's contract number, if applicable.
- (3) Reporting period. The appropriate biennium is to be selected.
- (4) The Agency Number. This will complete the next column with Agency Name.
- (5) Legal Citation for the Authorization.
- (6) Department ID responsible for the Project.
- (7) The Appropriation for the Project.
- (8) The Appropriation Amount.
- (9) Project Start Date.
- (10) Project Completion Date.
- (11) The County where the Project is located or, if it is located in more than one county, where it is primarily located.
- (12) Funding Source for Project. The selection will be Trunk Highway Bonds, General Obligation Bonds or General Fund.
- (13) Job Type. Jobs should be classified as either (i) engineering/professional, (ii) construction, or (iii) other. Manager and supervisor jobs shall be classified as category (i), (ii) or (iii) based on the nature of the work those individuals spent the majority of their time overseeing.
- (14) Hourly Wages. Jobs should be classified according to the hourly pay ranges below. Overhead or indirect costs or the value of pensions or other benefits should not be included in wages.
 - (i) less than \$10.00,
 - (ii) \$10.01 to \$15.00,
 - (iii) \$15.01 to \$20.00,
 - (iv) \$20.01 to \$25.00,
 - (v) \$25.01 to \$30.00,
 - (vi) \$30.01 to \$35.00,
 - (vii) \$35.01 to \$40.00, or
 - (viii) more than \$40.00.

(15) Jobs.

- a. Jobs should be classified as either (i) jobs created or (ii) jobs retained; they will not be counted as both. A “job created” is a new position created and filled, or an existing unfilled position that is filled, because of the Project. A “job retained” means a job at a specific wage level that existed prior to beginning the Project that would have been lost but for the Project. Only jobs in Minnesota should be counted.
- b. Jobs should be expressed in “full-time equivalents” (FTE). In calculating an FTE, the number of hours worked during the Reporting Period should be divided by 2,080 (the number of hours representing a full work schedule in a Reporting Period). Jobs should be reported regardless of when the Project or an individual’s employment began or ended. Jobs are to be calculated based on hours worked in the current Reporting Period only, so that reporting is not cumulative.
- c. Jobs should not be separated into full-time, part-time, temporary, seasonal, etc. Instead, all hours should be totaled and converted into FTEs as indicated above.

(c) Each contractor will report its workforce and the workforce of its subcontractors active during the Reporting Period. This includes employees actively engaged in the Project who work on the jobsite, in the Project office, in the home office or telecommute from home or other alternative office location. This includes, but is not limited to, any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the Project. This does not include material suppliers such as steel, culverts, guardrail and tool suppliers. Only hours that relate to time spent on the Project should be reported.

(d) The Grant Recipient must incorporate these reporting requirements into its contracts with its contractors (in part so that contractors can add the requirements to their contracts with subcontractors and impose deadlines on reporting by subcontractors).

(e) To distinguish the jobs reported by contractors that were funded by the Grant, the Grant Recipient must multiply the job numbers reported by each contractor in each category above by the percentage of total Project costs funded by the Grant (e.g., if the Grant was 40% of total Project costs, the Grantee should multiply the jobs numbers given in each category by 40% to arrive at the number of jobs funded by the Grant) and it is those numbers that should be reported to State Entity.