

Document A

**GENERAL FUND APPROPRIATION BOND
PROCEEDS**

**MASTER GRANT AGREEMENT
CONSTRUCTION GRANT
for the
Duluth Regional Exchange District
PROJECT**

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GENERAL FUND APPROPRIATION BOND PROCEEDS
MASTER GRANT AGREEMENT - CONSRUCTION GRANT
for the
DULUTH REGIONAL EXCHANGE DISTRICT
PROJECT

THIS AGREEMENT shall be effective as of _____, and is between the City of Duluth, Minnesota (“Grant Recipient” or “City”), and the Minnesota Department of Employment and Economic Development (“State Entity” or “DEED”).

RECITALS

A. Minnesota Laws 2019, First Special Session, Chapter 6, Article 10, as amended by Minnesota Laws 2021, First Special Session, Chapter 9, Section 1, as may be further amended from time to time (the “Act”), authorizes the public financing by the State of Minnesota of specified public infrastructure projects within a Regional Exchange District (hereinafter defined) for the public purposes of (1) repurposing vacant or underutilized private land, or unutilized property interests, such as air rights, for development and redevelopment and to incent significant private investment; (2) redeveloping vacant or underutilized private land to increase its tax-generating and job-creating potential or to provide housing or meeting community needs; and (3) development by the anchoring institutions in the community, such as health care organizations and institutions of higher education, to create opportunities to improve the economy of the City and Greater Minnesota regions and attract and retain workforce.

B. Section 3 of the Act, codified as Minn. Stat. §469.51, subdivision 1, establishes a Regional Exchange District within the City marked by designated boundaries.

C. Section 5 of the Act, codified as Minn. Stat. §469.53, as amended, identifies eight public infrastructure projects as hereinafter defined within or relating to the Regional Exchange District eligible for state appropriation support payments upon approval by the governing body of the City, including:

1. Demolition and replacement of a skywalk connected to an existing medical district parking ramp over 4th Avenue East in an amount not to exceed \$2,100,000, including any land acquisition.
2. A ramp with up to 1,400 new parking stalls and a skywalk to serve Medical Entity West in an amount not to exceed \$37,900,000, including any land acquisition.
3. Extension of 6th Avenue East from 2nd Street to 1st Street in an amount not to exceed \$6,650,000, including any land acquisition.
4. Demolition of existing hospital structure for site reuse, for the public purposes enumerated in the Act, in an amount not to exceed \$11,820,000.

5. Roadway, utility, and site improvements and capacity upgrades to support Medical Entity West hospital construction in an amount not to exceed \$13,950,000.
6. District energy connections, capacity enhancement, a pressure pump station, and district energy utility improvements outside of the Regional Exchange District reasonably necessary and advantageous to serve developments within the Regional Exchange District, in an amount not to exceed \$7,000,000.
7. A ramp with up to 400 new parking stalls to serve Medical Entity East in an amount not to exceed \$14,000,000.
8. Site improvements made upon private property and within the public realm, including retaining walls, public sidewalks, public stairs, and other related infrastructure, necessary to support Medical Entity West hospital construction, in an amount not less than \$1,300,000 or in excess of \$4,300,000.

D. Sections 2 through 7 of the Act took initial effect on June 25, 2019 (“Effective Date”), the day after the governing body of the City took action (i) to approve the Act as required by Minn. Stat. §645.021, subdivisions 2 and 3, and (ii) to approve the list of Projects identified in Recital C.

E. Section 5 of the Act, codified as Minn. Stat. §469.53, allows the State Entity to reimburse the Grant Recipient for costs of Projects that begin construction prior to September 30, 2020 but in no event earlier than the Effective Date.

F. Under Section 6, subd. 3 of the Act, the City elected to have the State issue appropriation bonds to finance the Projects in lieu of directly receiving the appropriation support payments.

G. Section 1 of the Act, codified as Minn. Stat. §16A.968, authorizes the Commissioner of Minnesota Management and Budget (the “MMB”), to sell and issue appropriation bonds of the State, in one or more series (the “Bonds”), upon request by the City and subject to any conditions precedent to their issuance specified in the Act, in amounts not to exceed \$97,720,000 net of costs of issuance, which aggregate amount is appropriated to the State Entity for a grant or grants to the Grant Recipient for the public purposes as provided by law, specifically financing the Projects identified in Recital C.

H. Section 1, Subdivision 3 of the Act appropriates the proceeds of the Bonds to the State Entity for a grant to the Grant Recipient for payment of costs of eligible Projects as specified in Recital C.

I. As provided by the Act, as amended, the Commissioner of MMB has issued, or is taking all reasonable, necessary and customary measures to sell and issue, Bonds in accordance with and as authorized by the Act and as contemplated by this Agreement in furtherance of the financing of the Projects.

J. As permitted by Minn. Stat. §16A.968, subd. 2(c), the Bonds may be includable in or

excludable from the gross income of the owners for federal income tax purposes. In the event all or a portion of the Bonds are issued on a tax-exempt basis, the Grant Recipient and the State Entity understand that it will be a necessary condition to an issuance of such tax-exempt Bonds for the Grant Recipient and the State Entity to enter into customary federal tax regulatory and compliance agreements or supplement this Agreement to assure satisfaction of and compliance with the federal income tax laws governing tax-exempt bond issues.

L. For the purpose of applying and using public monies that are the proceeds of Bonds in conformity with legislatively-determined public purposes as provided by the Act, 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 for application in accordance with the Act.

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 IV hereof.

“Agreement” - means this General Fund Appropriation Bond Proceeds Master Grant Agreement Construction Grant for the Duluth Regional Exchange District, and any subsequent Amendment hereto.

“Amendment” – means the form of Grant Agreement Amendment attached as **Attachment II** executed from time to time to evidence the availability of a designated sum of Bonds being made available to Project or Projects in connection with each issuance of Bonds and as applicable to the Projects or portions thereof being funded from each Bond issue.

“Code” – means the Internal Revenue Code of 1986, as amended from time to time, and all United States Treasury Regulations, revenue procedures and revenue rulings issued

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

“Completion Date” – means, with respect to each of the Construction Contract Documents entered into between the Grant Recipient, or its Designee, and the Contractor or

Contractors concerning a particular Project which is under consideration at that time, the date of projected completion of the Project or Projects as specified in the Construction Contract Documents.

“Contractor” - means any person engaged to work on or to furnish materials and supplies for a Project including, if applicable, a general contractor, one or more design professionals, engineering and testing professionals and construction managers.

“Construction Contract Documents” – means, with respect to each particular Project, 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 contracts between the Grant Recipient, or its Designee, and the Contractor or Contractors concerning the particular Project being constructed and which provide for the completion of the Project on or before the Completion Date specified in such Construction Contract Documents for a fixed price, a guaranteed maximum price, or a contract price based on unit prices and quantities which have been estimated by the Consulting Engineer.

“Consulting Engineer” – means the consulting engineer for Grant Recipient, or its Designee, with respect to each particular Project.

“Declaration” – means a declaration, or declarations, in the form contained in as **Attachment I** to this Agreement and all amendments thereto, indicating that the Grant Recipient’s ownership interest in the Real Property and, if applicable, Facility is subject to the provisions of this Agreement.

“Designee” – means SMDC or St. Luke’s, as applicable, which entity has entered into a development agreement or similar contractual relationship with the Grant Recipient to construct any of the Projects and to whom the Grant Recipient has assigned certain rights and obligations under this Agreement.

“Development Agreement” means an agreement between Grant Recipient and a Designee pursuant to which said Designee is obligated to acquire Real Property or to design or construct any Facility authorized pursuant to Section 5 of the Act. Any Real Property so acquired by said Designee with any Grant funds or upon which any Facility is constructed shall be subject to this Agreement, and the Declaration or if applicable the Restrictive Covenant must be recorded against the Real Property.

“Draw Requisition” - means a draw requisition that the Grant Recipient 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” or “Facilities”, if applicable – means a building or structure and roads and utilities comprising one or more of the Projects identified in Recital C, and which is located, or will be constructed and located, on the Real Property.

“Fair Market Value” – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal which assumes that all mortgage liens or encumbrances on the property being sold, which negatively affect the value of such property, will be released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all mortgage liens or encumbrances on the property being sold, which negatively affect the value of such property, will be released at the time of acquisition by the purchaser.

“Grant” - means a grant or grants of monies from the State Entity to the Grant Recipient in an aggregate amount not to exceed \$97,720,000.

“Grant Recipient” - means the City of Duluth, a home rule charter city.

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

“Project” or “Projects” - means each of the individual projects described in subparagraphs 1 through 8, respectively, of Recital C of this Agreement, including the performance of each of those activities identified in Section 5 of the Act and in Recital C above for the public purposes identified in Section 2.03 below.

“Real Property” - means the applicable portions of real property located within the Regional Exchange District in the County of St. Louis, State of Minnesota or that property upon which any portion of any Project is constructed as authorized by the Act and this Agreement, legally described in any Amendment to this Agreement.

“Regional Exchange District” - means the regional exchange district in the City established by Section 3 of the Act, and codified as Minn. Stat. §469.51, subd. 1.

“Restrictive Covenant” – means a restrictive covenant or covenants declaration, or declarations, in the form contained as **Attachment III** to this Agreement and all amendments thereto, signed by a Designee indicating that the Real Property and, if applicable, Facility subject thereto is subject to the provisions of this Agreement.

“SMDC” or “Medical Entity West” – means St. Mary’s Duluth Clinic Health System on behalf of itself and its affiliated entities including but not limited to SMDC Medical Center and St. Mary’s Medical Center, a Minnesota nonprofit corporation.

“St. Luke’s” or “Medical Entity East” – means St. Luke’s Hospital of Duluth Minnesota, a nonprofit healthcare system based in the City.

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

“Use Contract” - means a lease, management contract or other similar contract between Grant Recipient and any other entity which grants to such entity any right to have access to, use, occupy, manage, or operate all or any portion of any Project, and which involves or relates to any part of the Real Property and, if applicable, a Facility.

“Use” - means any entity with which the Grant Recipient contracts under a Use Contract.

“Useful Life of the Real Property and, if applicable, Facility” – means the term set forth in any Amendment for each Project, which shall be derived as follows: (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments for Facilities that are to be constructed or bettered on the Real Property.

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, and any Amendment hereto. 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 or its Designee for expenditures on the eligible Projects described in Recital C to this Agreement and Section 5 of the Act that it has already made or caused to be made, or will make or cause to be made, on or after the Effective Date in the performance of the following activities, and may not use the Grant for any other purpose. For the purposes of acquisition of interests in Real Property to be owned or held by Grant Recipient, the date of such acquisition by Grant Recipient shall be the operative date for the purposes of this section:

- Acquisition of the Real Property in fee simple title or an eligible leasehold interest as delineated in Section 2.04.L
- Acquisition of an easement on the Real Property
- Improvement of the Real Property, including demolition of existing structures and associated predesign and design work and site preparation
- Acquisition of the Facility in fee simple title or an eligible leasehold interest ownership interest as delineated in Section 2.04.L
- Improvement of the Facility, including predesign and design, construction or renovation or rehabilitation, and furnishing and equipping

- Predesign, design, site preparation, including demolition of existing structures, construction, furnishing and equipping of any Facility

Section 2.03 **Operation of the Real Property and Facility.** The Grant Recipient shall operate the Real Property and, if applicable, the Facilities or cause them to be operated for the governmental purposes described in the Act and to accomplish the public purposes in the Act or for such other use as the Minnesota legislature may from time to time designate, and may enter into Use Contracts with Usees to so operate the Real Property and, if applicable, the Facility; provided that such Use Contracts must fully comply with all of the provisions contained in Section 3.01. The Grant Recipient shall also annually determine that the Real Property and, if applicable, the Facility are being used for the governmental purposes described in the Act and to accomplish the public purposes in the Act, and shall annually supply a statement, sworn to before a notary public, to such effect to the State Entity.

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, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. This Agreement, the Declaration, 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, the Declaration, 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, any 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, the Declaration, 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, the Declaration, 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, a 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 Projects were, 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 Projects.

I. All applicable licenses, permits and bonds required for the performance and completion of the Projects 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 Facilities in the manner specified in Section 2.03 have been, or will be, obtained.

K. It will operate, maintain, and manage the Real Property and the Facilities, or cause them to be operated, maintained and managed, 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 the Facilities.

L. Unless otherwise set forth in this subparagraph L, it has, will acquire, or will otherwise have the use of the following interests in the Real Property and, if applicable, the Facilities, and will possess or otherwise have use of all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, the Facilities in the manner specified in Section 2.03:

Ownership Interest in the Real Property:

- Fee simple ownership of those parcels of Real Property upon which the Grant Recipient's Projects will be located.
- A Real Property/Facility Lease for the Real Property, or portions thereof, in form and substance acceptable to the State Entity, for a term of at least 125% of the Useful Life of the applicable portion of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity.
- 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 applicable portion of Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity.

Ownership Interest in the Facilities, if applicable:

- Fee simple ownership of the Facility.

- A Real Property/Facility Lease for the Facility or Facilities, 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.

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 Projects and the intended operation and use of the Real Property and the Facilities, or those easements, covenants, conditions and restrictions which are specifically consented to, in writing, by the State Entity.

The acquisition and recordation by Grant Recipient or its Designee of a Restrictive Covenant on the Real Property used for the Projects identified in subparagraph 8 of Recital C shall be deemed an acceptable interest in the Real Property and, if applicable, the Facilities associated with those Projects. However, the Grant Recipient covenants and represents and warrants that it shall enter into appropriate Development Agreements with its Designee or Designees assigning rights and responsibilities for such Project.

The Project identified in subparagraph 4 of Recital C is not subject to the requirements in this Section 2.04.L. However, the Grant Recipient covenants and represents and warrants that it shall enter into appropriate Development Agreements with its Designee or Designees assigning rights and responsibilities for such Project.

The Grant Recipient has entered into a Development Agreement pursuant to which its Designee will acquire all of that portion of the Real Property necessary for the construction of the Project identified in subparagraph 2 of Recital C and will construct said Project. This Development Agreement requires that upon completion of construction of said Project, Designee will convey said Project together with the aforesaid portion of the Real Property to the Grant Recipient; and, pursuant to said Development Agreement, Grant Recipient is obligated to accept ownership of said Project and said portion of the Real Property from its Designee. It is agreed that Grant Recipient shall not be obligated to demonstrate ownership of said Project or of said portion of the Real Property until it accepts ownership thereof from its Designee and that, upon accepting ownership of said Project and said portion of the Real Property, Grant Recipient will provide evidence of ownership thereof to the State Entity and will record a Declaration against the portion of the Real Property occupied by the Project within thirty (30) days of accepting such ownership. Grant Recipient shall obtain ownership of the Project identified in subparagraph 2 of Recital C on or before June 30, 2023. Grant Recipient will cause a provision to be added to the Development Agreement for this Project making the State of Minnesota, acting through the Commissioner of DEED, an intended third-party beneficiary of this paragraph.

M. It will fully enforce the terms and conditions contained in any Use Contract.

N. It has complied with, or is taking all reasonable, necessary and customary measures to comply with, the matching funds requirement, if any, contained in Section 5.23 and any Additional Requirements contained in Section 5.29 of this Agreement.

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

P. Each Project will be completed substantially in accordance with the Construction Contract Documents by the Completion Dates established thereunder, 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 Projects.

R. It will not allow any lien or encumbrance that is prior and superior to the Declaration to be created on or imposed upon the Real Property, whether such lien or encumbrance is voluntary or involuntary and including but not limited to a mechanic's lien or a mortgage lien, without the prior written consent of the State Entity.

S. 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.

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.

U. It shall, by May 1 of any year until the requirements set forth in Section 5.29.B of this Agreement have been fully satisfied by Medical Entity East and Medical Entity West, certify to the State Entity the amount of qualified expenditures required under Section 6, subd. 3(a) of the Act, as codified by Minn. Stat. §469.54, subd. 3(a).

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; provided, however, that in the event occurs which would qualify as a "Force Majeure" event under law which delays performance of any party hereto

the time for performance shall be extended for the duration of such event. 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, the Declaration, 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 latest date established by adding a time period equal to 125% of the Useful Life of the Real Property and, if applicable, Facility for each Project to the date on which each such Project is first used for the purpose set forth in Section 2.03. 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, and the State Entity shall execute whatever documents are needed to release the Real Property and, if applicable, Facilities from the effect of this Agreement, the Declaration, and if applicable the Restrictive Covenant.

Section 2.09 Modification and/or Early Termination of Grant. Any Amendment to this Agreement shall acknowledge the effective date of the Construction Contract Documents that have been entered into by and between the Grant Recipient, or its Designee, and the Contractor.

Except as otherwise provided in this section or in Section 2.11 below, if all of the Grant amounts identified in an executed Amendment have not been disbursed on or before the date that is five (5) years from the effective date of such Amendment to this Agreement, then the State Entity's obligation to continue to fund the Grant under such Amendment shall terminate, and, in such event, (a) 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, or (b) if some but not all of the Grant have been disbursed under such Amendment by such date then the State Entity shall have no further obligation to provide any additional funding under the applicable Amendment 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. Provided, however, nothing to the contrary herein withstanding, if the State Entity has not disbursed all of the Grant amounts identified in an executed Amendment to this Agreement on or before the date that is five (5) years from the effective date of such Amendment, the Grant Recipient may request in writing that the State Entity grant an extension of an additional one (1) year to the Grant Recipient in which to disburse the Grant. The State Entity may grant such an extension in the exercise of its discretion.

This Agreement shall also terminate and no longer be of any force or effect as to the portions of Real Property upon (a) which a termination occurs of the Grant Recipient's leasehold or easement interest in such portions of Real Property in accordance with the terms of such lease or easement, or (b) the sale of the interest held by Grant Recipient in such portions of the Real Property and, if applicable, the Facility in accordance with the provisions contained in Section 3.02 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of Management and Budget in compliance with the provisions contained in Section 3.03. Upon such termination the State Entity shall execute and deliver to the Grant Recipient such documents as are required to release the applicable portion of Real Property and, if applicable, the applicable Facility, from the effect of the Declaration and if applicable the Restrictive Covenant.

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, then the following shall occur.

- A. This Agreement shall survive and remain in full force and effect.
- B. The amount returned by the Grant Recipient shall be credited against any amount that shall be due to the Commissioner of Management and Budget under Section 3.03 and against any amount that becomes due and payable because of any other Event of Default.

Section 2.11 Excess Funds. If the full amount of the Grant and any matching funds referred to in Section 5.23 are not needed to complete the Projects, then, unless language in the legislation that authorized the Grant indicates otherwise, the Grant shall be reduced by the amount not needed. Notwithstanding anything to the contrary in the foregoing sentence, upon notice to the State Entity, any unexpended amount for the Projects described in subparagraphs 1 through 4 and subparagraph 8 of Recital C, that have been substantially completed may fund the Project described in subparagraph 5 of Recital C. The unexpended amounts applied to the Project in described in subparagraph 5 of Recital C, shall be in addition to the amount specified for that Project. The Duluth City Council must submit a written plan to the State Entity to use unexpended funds in the manner under this paragraph. If there are remaining amounts available under this Grant following completion of all the Projects, then the remaining and unused monies shall be transferred to the Commissioner of Management and Budget.

Article III USE AND SALE

Section 3.01 Use Contracts. Each and every Use Contract that the Grant Recipient enters into must comply with the following requirements.

- A. The purpose for which the Use Contract was entered into must be a governmental purpose.
- B. It must contain a provision setting forth the statutory authority under which the Grant Recipient is entering into the Use Contract, and must comply with the substantive and procedural provisions of such statute.
- C. It must contain a provision stating that the Use Contract is being entered into in order to carry out the purpose for which the Grant was allocated and must recite the purpose.

D. It must allow for termination by the Grant Recipient in the event of a default thereunder by the Usee, or in the event that the specific purpose for which the Grant was allocated is terminated or changed.

E. It must require the Usee to pay all costs of operation and maintenance of the portion of the Real Property and, if applicable, the Facility affected by the Use Contract, unless the Grant Recipient is authorized by law to pay such costs and agrees to pay such costs.

F. It must contain a provision requiring the Usee to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66, Subd. 1, as it may be amended, modified or replaced from time to time, for the term of the Use Contract.

Section 3.02 **Sale.** The Grant Recipient shall not sell any part of its ownership interest in the Real Property or, if applicable, the Facilities, unless all of the following provisions have been complied with fully.

A. The Grant Recipient determines, by official action, that the Real Property or, if applicable, Facility or Facilities is no longer usable or needed for the applicable public purpose identified in Recital A to this Agreement.

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

D. Written notice of such proposed sale has been supplied to both the State Entity and the Commissioner of Management and Budget at least 30 days prior thereto.

The acquisition of the Grant Recipient's interest in the Real Property or portion of the Real Property if applicable and, if applicable, a Project or Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation of thereof, by a lender that has provided monies for the acquisition of the Grant Recipient's interest in or betterment of the Real Property or portion of the Real Property if applicable and, if applicable, a Project or Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates the Real Property or such portion of the Real Property if applicable and, if applicable, the Facility in a manner which is not inconsistent with the program specified in Section 2.03 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property or portion of the Real Property if applicable and, if applicable, a Project or Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 3.03.

Section 3.03 **Proceeds of a Sale.** Upon the sale of the Grant Recipient's interest in the Real Property or portion thereof and, if applicable, the Facility or Facilities the net proceeds thereof shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of Management and Budget in an amount equal to the amount of the Grant actually disbursed, or applicable share of the Grant for the Real Property and, if applicable, Facility being sold, and if the amount of such net proceeds shall be less than the amount of the Grant actually disbursed then all of such net proceeds shall be distributed to the Commissioner of Management and Budget.

B. The remaining portion, after the distribution specified in Section 3.03.A, shall be distributed to pay in full any outstanding public or private debt incurred to acquire the Grant Recipient's interest in or for the betterment of the Real Property or portion of the Real Property if applicable and, if applicable, the Facility in the order of priority of such debt.

C. Any remaining portion, after the distributions specified in Sections 3.03A and B, shall be divided and distributed in proportion to the shares contributed to the acquisition of the Grant Recipient's interest in or for the betterment of the Real Property or portion of the Real Property if applicable and, if applicable, a Project or Facility by public and private entities, including the State Entity but not including any private entity that has been paid in full, that supplied funds in either real monies or like-kind contributions for such acquisition and betterment, and the State Entity's distribution shall be made to the Commissioner of Management and Budget. Such public and private entities may agree amongst themselves as to any redistribution of such distributed funds.

The Grant Recipient shall not be required to pay or reimburse the State Entity for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Grant actually disbursed.

Article IV DISBURSEMENT OF GRANT PROCEEDS

Section 4.01 **The Advances.** The State Entity agrees, on the terms and subject to the conditions set forth herein and subject to Section 6, subdivision 3 of the Act, as codified by Minn. Stat. §469.54, subd. 3, and Minn. Stat. § 16A.968, subdivision 8(1), to make Advances from the Grant to the Grant Recipient from time to time in an aggregate total amount not to exceed the total amount of the Grant. Subject to Section 2.11, provided, however, the State Entity's obligation to make Advances with regard to any particular Amendment shall terminate as of the date or dates established by Section 2.09 even if all of the Grant amount approved for said Amendment has not been disbursed by such date.

It is the intent of the parties hereto that the rate of disbursement of the Advances for each Project, individually, shall not exceed the rate of completion of said Project or the rate of disbursement of the matching funds required, if any, under Section 5.23. Therefore, the cumulative amount of all Advances disbursed by the State Entity for any Project at any point in time shall not exceed the percentage of completion of that particular Project and the percentage of the matching funds required, if any, under Section 5.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1

Cumulative Advances \leq (Grant amount approved for each Project) \times (percentage of matching funds, if any, required under Section 5.23 that have been disbursed)

Formula #2

Cumulative Advances \leq (Grant amount approved for each Project) \times (percentage of that Project that has been completed)

Section 4.02 **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 before the 15th day of the month in which an Advance is requested. Each Draw Requisition with respect to construction items for each Project shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion of such Project as approved by the Grant Recipient and the State Entity, plus (ii) the value of materials and equipment not incorporated in a particular Project but delivered and suitably stored on or off that Project site in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances for such Project.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off a particular 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 a particular Project.

At the time of submission of the final Draw Requisition for any Project which shall not be submitted before substantial completion of such Project, including all landscape requirements and off-site utilities and streets needed for access to the Projects 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 or its designee 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 such Project, and (ii) satisfactory evidence that all work on such Project 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 for such Project.

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 4.03 **Additional Funds from the Grant Recipient.** 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 Projects 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 Projects, 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 Projects. 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 4.04 **Conditions Precedent to Any Advance.** Subject to Section 2.11, 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 for the subject Project 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 allocated to said Project of the Grant set forth in Section 1.01, except as otherwise provided herein.

B. The State Entity shall have either received, where applicable, a duly executed Declaration, and if applicable Restrictive Covenant, for the applicable Real Property and, if applicable, Facilities that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon, or evidence that such Declaration or Restrictive Covenant will promptly be recorded and delivered to the State Entity.

C. 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 the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Grant Recipient.

D. 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 all of the Projects and all other expenses that may occur in conjunction therewith.

E. 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 5.23.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Grant Recipient currently possesses or will use the Grant to acquire an eligible ownership interest delineated in Section 2.04.L.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, the particular Project or Facility being constructed or improved 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.

H. 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 particular Project or Facility being constructed or improved 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.

I. 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 particular Project or Facility being constructed or improved 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.

J. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the particular Project or Facility being constructed or improved 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.

K. 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 particular Project or Facility being constructed or improved.

L. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Construction Contract Documents for each Project being constructed or improved are in place and are fully and completely enforceable.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the subject Project substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on that 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, guaranteed maximum price, or contract price based on unit prices and quantities have been estimated by the Consulting Engineer, contained in the Construction Contract Documents which name the Grant Recipient as the obligee or third-party beneficiary thereunder, or such other evidence as may be acceptable to the Grant Recipient and the State Entity.

N. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the policies of insurance referenced under Section 5.01, if applicable, are in full force and effect.

O. Intentionally omitted.

P. No determination shall have been made by the State Entity that the amount of funds committed to the completion of a particular 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 that Project, or if such a determination has been made and notice thereof sent to the Grant Recipient then the Grant Recipient shall supply or cause some other entity to supply the necessary funds in accordance with Section 4.03, or to provide evidence acceptable to the State Entity that sufficient funds are available.

Q. 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 with regard to the Project for which the subject Advance is sought.

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

S. In accordance with Section 6, subd. 3 of the Act, as codified by Minn. Stat. §469.54, subd, 3(a), no Advance for any parking structure for a medical business entity will be processed by the State Entity until the requirements in Section 5.29.B of this Agreement have been met.

Section 4.05 **Construction Inspections.** The Grant Recipient, or its Designee, and its architect, if any—shall be responsible for making their own inspections and observations of the Projects, 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 its architect and the Consulting Engineer, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Grant Recipient, or the Designee responsible for the subject Project, shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer may conduct such inspections of any Project as either may deem necessary for the protection of the State Entity’s interest, and that any inspections which may be made of a 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 V
MISCELLANEOUS

Section 5.01 **Insurance.** During construction of the Facilities, the Grant Recipient, by itself or by and through its Designee, shall maintain or cause to be maintained builders risk insurance on the Facility. Further, the Grant Recipient, by itself or by and through its Designee, shall maintain or cause to be maintained fire and extended coverage insurance on those portions of the Facilities which constitute above-ground fixtures, in an amount equal to the full insurable value thereof. If damages which are covered by such required insurance occurs to any Facility, if such exists, then the Grant Recipient shall use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage.

If the Grant Recipient elects to maintain general comprehensive liability insurance regarding the Real Property and Facilities, if such exists, then the Grant Recipient shall have the State Entity named as an additional named insured therein.

At the written request of either the State Entity or the Commissioner of Management and Budget, the Grant Recipient shall promptly furnish thereto all written notices and all paid premium receipts received by the Grant Recipient regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

Section 5.02 **Condemnation.** If after the Grant Recipient has acquired the ownership interests delineated in Section 2.04.L all or any portion of the Real Property and, if applicable, a Facility is condemned to an extent that the Grant Recipient can no longer comply with the provisions contained in Section 2.04.L, then the Grant Recipient shall, at use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Grant Recipient to continue to comply with the provisions contained in Section 2.04.L and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes.

As recipient of any of condemnation awards or proceeds referred to herein, the State Entity agrees to and will disclaim, assign or pay over to the Grant Recipient all of such condemnation awards or proceeds it receives so that the Grant Recipient can comply with the requirements that this Section imposes upon the Grant Recipient as to the use of such condemnation awards or proceeds.

Section 5.03. **Use, Maintenance, Repair and Alterations.** The Grant Recipient, or its Designee, shall not, without the written consent of the State Entity, permit or suffer the use of any of the Real Property and, if applicable, any Facility, for any purpose other than the use for which the same is intended as of the effective date of this Agreement. In addition, the Grant Recipient: (i) shall keep the Real Property and, if applicable, the Facilities, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) shall not, without the written consent of the State Entity, remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Facilities, if applicable, (iii) shall not do any act or thing which would unduly impair or depreciate the value of the Real Property and, if applicable, the Facilities, (iv) shall not abandon the Real Property and, if applicable, the Facilities, (v) shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion

of the Facilities, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, (vi) shall comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property and, if applicable, the Facilities, or any part thereof, or requiring any alterations or improvements thereto, (vii) shall not commit or permit any waste or deterioration of the Real Property and, if applicable, the Facilities, (viii) shall keep and maintain abutting grounds, roads, and parking areas in good and neat order and repair, (ix) shall comply with the provisions of any lease if the Grant Recipient's interest in any part of the Real Property and, if applicable, any Facility, is a leasehold interest, (x) shall comply with the provisions of any condominium documents if any part of Real Property and, if applicable, any Facility, is part of a condominium regime, (xi) shall not remove any fixtures or personal property from the Real Property and, if applicable, any Facility, that was paid for with the proceeds of the Grant unless the same are immediately replaced with like property of at least equal value and utility, and (xii) shall not commit, suffer or permit any act to be done in or upon the Real Property and, if applicable, any Facility, in violation of any law, ordinance or regulation. The requirements of this Section shall be applicable to Designees with respect to Projects for which they are the Designee. The provisions of this Section shall apply to the Project described in subparagraph 4 of Recital C of this Agreement only to the extent that they are consistent with the nature of the Project described therein.

Section 5.04 Records Keeping and Reporting. The Grant Recipient, or its Designee, 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 Projects and operation of the Real Property and, if applicable, the Facilities, 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, or its Designee, shall 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 Projects are fully completed and placed into operation.

Section 5.05 Inspection of Facility After Completion. Upon reasonable request by the State Entity, the Grant Recipient or its Designee, shall allow, and will require any entity to which it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, any Facility to allow, the State Entity to inspect the Real Property and, if applicable, the Facilities.

Section 5.06 Data Practices. The Grant Recipient, or its Designee, agrees with respect to any data that it possesses regarding the Grant, the Projects, or the Real Property and, if applicable, the Facilities, 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 5.07 **Non-Discrimination.** The Grant Recipient, or its Designee, agrees to not engage in discriminatory employment practices in the completion of the Projects, or operation or management of the Real Property and, if applicable, the Facilities, 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 5.08 **Worker's Compensation.** The Grant Recipient, or its Designee, 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 Projects, and the operation or management of the Real Property and, if applicable, the Facilities.

Section 5.09 **Antitrust Claims.** The Grant Recipient, or its Designee, 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 Projects, and operation or management of the Real Property and, if applicable, the Facilities that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 5.10 **Review of Plans and Cost Estimates.** The Projects consist of utility infrastructure projects, parking structures, demolition of existing structures and roads. The Grant Recipient agrees to comply with all applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time, and, if required by said statute, the Grant Recipient shall 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 for each Project to be performed is ready to begin.

Section 5.11 **Prevailing Wages.** The Grant Recipient, or its Designee, 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. §§ 177.30 and 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Projects and the operation of the Real Property and, if applicable, Facilities as intended by the Minnesota Legislature.

Section 5.12 **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.

Section 5.13 **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 Projects or operation of the Real Property and, if applicable, the Facilities, 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 Projects or operation of the Real Property and, if applicable, the Facilities, 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, or agents, or by any User, its officers, employees, or agents, 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 5.06.

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 5.14 **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, or its Designee, the State Entity, or the Commissioner of Management and Budget, nor shall the Grant Recipient, or its Designee, 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 Projects, or operation of the Real Property and, if applicable, the Facility.

The Grant Recipient, or its Designee, 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 Projects and the operation and maintenance of the Real Property and, if applicable, the Facilities. All personnel of the Grant Recipient, or its Designee, or other persons while engaging in the performance of this Agreement, the completion of the Projects, or the operation and maintenance of the Real Property and, if applicable, the Facilities 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 5.15 **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:
The City of Duluth
Chief Administrative Officer
Room 418
411 West First Street
Duluth, MN 55802

To the State Entity at:
Department of Employment and Economic Development
Great Northern Building
12th Floor
180 East Fifth Street
St. Paul, MN 55101-1678
Attention: Community Finance

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

Section 5.16 **Binding Effect and Assignment or Modification.** This Agreement, the Declaration, and the Restrictive Covenant 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, the Declaration, or the Restrictive Covenant without the prior written consent of the other party. All provisions in this Agreement which require or obligate Grant Recipient to perform or agree shall also be deemed as permitting any Designee to so perform or agree, as the context requires. No change or modification of the terms or provisions of this Agreement, the Declaration, or the Restrictive Covenant 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 5.17 **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 5.18 **Entire Agreement.** This Agreement, the Declaration, the Restrictive Covenant 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 5.19 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement, the Declaration, or the Restrictive Covenant 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 5.20 **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 5.21 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 5.22 **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 5.23 **Matching Funds.** The Grant Recipient must obtain and supply the following matching funds, if any, for the completion of the Projects:

NONE

Any matching funds 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 Projects. The Grant Recipient shall supply to the Commissioner

of MMB whatever documentation the Commissioner of MMB 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 MMB.

Section 5.24 Source and Use of Funds. The Grant Recipient represents to the State Entity and the Commissioner of Management and Budget that it will prepare and submit a source and use statement to the State Entity in connection with each Amendment to this Agreement showing the total cost of the Projects or Project phases to be funded as part of each Amendment and all of the funds that are available for the completion of the Projects or Project phases identified in such source and use statement, and that the information contained in such statement will correctly and accurately delineate the following information.

A. The total cost of the Projects or Project phases being funded pursuant to each Amendment 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 Projects 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 Projects, 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 each source and use statement.

The funds shown in each source and use statement and to be supplied for the Projects may, subject to any limitations contained in the legislation that authorized the Grant, be provided by either the Grant Recipient, its Designee, or a Usee under a Use Contract.

Section 5.25 Intentionally Omitted

Section 5.26 **Third-Party Beneficiary.** The Projects, and the associated public program to be operated in conjunction therewith, 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 5.27 **Applicability to Real Property and Facility.** This Agreement applies to the Grant Recipient's interest in the Real Property and if any Facilities exists to the Facilities. 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 5.28 **E-Verification.** The Grant Recipient, or its Designee, 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 and impose a similar requirement in any Use Contract to which it is a party.

Section 5.29 **Additional Requirements.** The Grant Recipient, or its Designee, and the State Entity agree to comply with the following additional requirements.

A. **City Utility Fund Contribution.** The Grant Recipient must use at least \$10,000,000 of the city utility fund to finance improvements made within the Regional Exchange District for sanitary sewer, storm sewer, and water systems and other related utility improvements in accordance with Section 4, subd. 6 of the Act, as codified by Minn. Stat. §469.52, subd. 6.

B. **Public Financing for Parking Ramps.** In accordance with Section 6, subd. 3(a) of the Act, codified as Minn. Stat. § 469.54, subd. 3(a), public financing for the construction of a parking structure for a medical business entity is not available until the State Entity determines that the medical business entity that would benefit from the parking structure to be financed has made at least \$50,000,000 in "qualified expenditures" (as defined in Minn. Stat. §469.54) on construction projects within the Regional Exchange District. The requirements of this paragraph apply to each medical business entity individually. Upon certification of the required amount by either medical business entity, public financing for the construction of parking structures benefiting that entity is available.

C. **Parking Revenues.** The Grant Recipient shall charge market rate parking fees to users of the parking facilities or structures constructed within the Regional Exchange District in accordance with Section 5 of the Act, codified as Minn. Stat. § 469.54, except as provided for in Subdivision 5 of Section 4 of the Act. By March 1 of the year following the year in which the parking facilities or structures are constructed within the Regional Exchange District, the Grant Recipient must certify to the State Entity:

- i. the total amount of revenue generated by the parking facilities and structures in the preceding year; and
- ii. the total amount necessary for operational and maintenance expenses of the facilities and structures in the current year.

By July 1 of each year thereafter, for a period of 25 years, the State Entity must confirm or revise the amounts as reported. An amount equal to 50 percent of the amount of revenue received by the Grant Recipient from the parking structures and facilities in the previous year that is greater than the amount necessary for operational and maintenance expenses of the facilities or structures in the current year must be paid by the Grant Recipient to the State Entity by September 1 *of each applicable year* for deposit into the general fund.

D. **Steel Products.** The Grant Recipient must require that the Projects use steel products made from iron ore mined from the taconite assistance area as defined in Minn. Stat. § 273.1341 to the extent practicable. In determining whether it is practicable, the Grant Recipient may consider the exceptions to the requirement by Public Law 111-5, section 1605.

E. **Development Agreements.** Subject to the requirements of Section 2.04.L herein, it is understood and agreed between the Grant Recipient and the State Entity that Grant Recipient has entered into one or more Development Agreements with a Designee pursuant to which the Designee contracted for the acquisition of Real Property or the design and construction of one or more of the Projects or both and that Grant Recipient may in the future enter into Development Agreements with one or more of the Designees for the acquisition of Real Property or for the design and construction of one or more of the Projects or both. Grant Recipient and the State Entity agree that to the extent that the requirements for documentation, review and approvals of documents and for documentation necessary to the reimbursement of Grant Recipient hereunder are specific to any specific Project, said requirements shall be applicable to the specific Project to which they pertain. In the event of any conflict between this paragraph and Section 2.04.L, Section 2.04.L shall control.

F. **Reporting and Monitoring.** The Grant Recipient shall provide annual progress reports, due by the end of each calendar year, to the State Entity on forms provided to the Grant Recipient by State Entity. The Grant Recipient shall allow the State Entity to monitor the Grant Recipient for financial accountability and achievement of desired goals in a manner consistent with the State Entity's monitoring policy.

Section 5.30 **Recitals.** Recitals A-L above are hereby incorporated into this Agreement.

Article VI TAX-EXEMPT COMPLIANCE

Section 6.01 **Preservation of Tax-Exempt Status.** If any Bonds are issued by MMB as tax-exempt Bonds under Section 103(a) of the Code, the Grant Recipient agrees not to take or

permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the tax-exempt Bonds, or to omit to take any action necessary to maintain such tax-exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 6.02 Use Contracts. If Bonds are issued as tax-exempt obligations under Section 103(a) of the Code, each lease, management contract or other similar contract that involves or relates to any part of the Real Property and any Facility entered into by the Grant Recipient shall include agreements of the Grant Recipient and the counterparty to comply with the provisions of the Code applicable to tax-exempt bonds, and further shall provide that, in the event of an Internal Revenue Service information data request, investigation or audit of or with respect to the tax-exempt Bonds, the Grant Recipient and the counterparty will fully and promptly cooperate with MMB in the assembly, documentation and preparation of responses to the Internal Revenue Service and otherwise with respect to the resolution of the matter.

Section 6.03 Arbitrage Compliance. If Bonds are issued as tax-exempt obligations under Section 103(a) of the Code, the Grant Recipient covenants that it will not use the proceeds of the Grant in such a manner as to cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations. To this end, the Grant Recipient shall:

- (1) maintain records identifying all “gross proceeds” (as defined in Treasury Regulations, Section 1.148-1(b)) attributable to the Bonds, the yield at which such gross proceeds are invested, any arbitrage profit derived therefrom (earnings in excess of the yield on the Bonds) and any earnings derived from the investment of such arbitrage profit;
- (2) make, or cause to be made as of the end of each fifth Bond Year, the determinations of the amount, if any, of excess arbitrage required to be paid to the United States by the State of Minnesota (the “Rebate Amount”);
- (3) pay, or cause to be paid, to the United States at least once every five Bond Years the amount, if any, which is required to be paid to the United States, including the last installment which shall be made no later than 60 days after the day on which the Bonds are paid in full; and
- (4) retain all records of the annual determination of the foregoing amounts until 6 years after the Bonds have been fully paid.

In order to comply with the foregoing provisions, the Grant Recipient shall determine the Rebate Amount within 30 days after the close of every fifth Bond Year and after payment in full of the Bonds. Upon each such determination, the Grant Recipient shall furnish to MMB a certificate showing how such calculation was made and shall pay to MMB, for deposit in the State Treasury, the Rebate Amount so determined. The Grant Recipient shall separately account for the earnings from the investment of the Rebate Amount and such earnings shall become part of the Rebate Amount.

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

GRANT RECIPIENT:

The city of Duluth, MN

By: _____

Its: Mayor

And: _____

Its: City Clerk

Dated: _____, _____

STATE ENTITY:

Minnesota Department of Employment and Economic Development _____,

By: _____

Kevin McKinnon

Its: Deputy Commissioner

Dated: _____, _____

STATE ENTITY:

Minnesota Department of Employment and Economic Development-Encumbrance Verification

By: _____

Its: Contract Coordinator

Attachment I to Grant Agreement
FORM OF DECLARATION

DECLARATION

The undersigned has the following interest in the real property legally described in **Exhibit A** attached hereto and all facilities situated thereon (the “Restricted Property”):

(Check the appropriate box.)

- a fee simple title,
- a lease, or
- an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is subject to those provisions, requirements, restrictions, and encumbrances contained in the “General Fund Appropriation Bond Proceeds Master Grant Agreement Construction Grant for the Duluth Regional Exchange District Project” dated «3» , «3», as amended from time to time, between the City of Duluth and the Minnesota Department of Employment and Economic Development. The Restricted Property shall remain subject to such provisions, requirements, restrictions, and encumbrances until it is released therefrom by a written release in recordable form signed by the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property.

To be used when legal description is not finalized.

[The legal description attached hereto was prepared based upon plans and specifications for the Restricted Property. Upon completion of the structural elements of the Restricted Property, the undersigned will cause a revised legal description to be prepared in accordance with an as-built survey of the Restricted Property. Following preparation of the revised legal description of the Restricted Property, the undersigned shall amend this Declaration to reflect the revised legal description and cause such amendment to be recorded with the appropriate recording offices in St. Louis County, Minnesota.]

(SIGNATURE BLOCK AND ACKNOWLEDGMENT)

This Declaration was drafted by:

(Name and address of individual
who drafted the Declaration.)

Exhibit A to Declaration
**LEGAL DESCRIPTION OR GENERAL DESCRIPTION
OF RESTRICTED PROPERTY**

Attachment II to Grant Agreement
FORM OF RESTRICTIVE COVENANT

RESTRICTIVE COVENANT

The undersigned has a fee simple interest in the real property legally described in **Exhibit A** attached hereto and all facilities situated thereon (the "Restricted Property"). As owner of such Restricted Property the undersigned does hereby declare, for the benefit of the City of Duluth and the State of Minnesota, that such interest in the Restricted Property is subject to those provisions, requirements, restrictions, and encumbrances contained in the "General Fund Appropriation Bond Proceeds Master Grant Agreement Construction Grant for the Duluth Regional Exchange District Project" dated _____«3»_____, «3», as amended from time to time, between the City of Duluth and the Minnesota Department of Employment and Economic Development. The Restricted Property shall remain subject to such provisions, requirements, restrictions, and encumbrances until it is released therefrom by a written release in recordable form signed by both the City of Duluth and the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. Upon termination of the Grant Agreement by its terms, the Commissioner of Minnesota Management and Budget and the City of Duluth shall provide a release of the Restrictive Covenant in a recordable form upon a written request for such release by an owner of the property restricted by the Restrictive Covenant.

To be used when legal description is not finalized.

[The legal description attached hereto was prepared based upon plans and specifications for the Restricted Property. Upon completion of the structural elements of the Restricted Property, the undersigned will cause a revised legal description to be prepared in accordance with an as-built survey of the Restricted Property. Following preparation of the revised legal description of the Restricted Property, the undersigned shall amend this Restrictive Covenant to reflect the revised legal description and cause such amendment to be recorded with the appropriate recording offices in St. Louis County, Minnesota.]

(SIGNATURE BLOCK AND ACKNOWLEDGMENT)

This Restrictive Covenant was drafted by:

(Name and address of individual
who drafted the Restrictive Covenant)

Exhibit A to Restrictive Covenant
**LEGAL DESCRIPTION
OF RESTRICTED PROPERTY**

Attachment III to Grant Agreement
FORM OF GRANT AGREEMENT AMENDMENT