

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

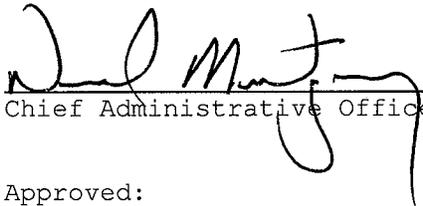
11-0092R

RESOLUTION ACCEPTING A GRANT FROM THE DEPARTMENT OF NATURAL RESOURCES 2010 TO 2012 COMMUNITY FOREST BONDING GRANT FOR THE CITY'S PLANTING FOR TOMORROW PROJECT TO BE USED TO PLANT TREES ON DULUTH'S BOULEVARDS AND IN PARKS IN THE AMOUNT OF \$25,000.

CITY PROPOSAL:

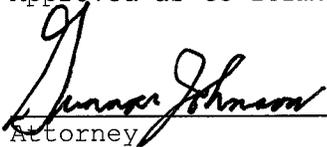
RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Department of Natural Resources 2010 to 2012 Community Forest Bonding Grant in the amount of \$25,000 for the Planting for Tomorrow project for planting of shade trees on Duluth's boulevards and in parks, funds to be deposited in Special Projects Fund 210-030-3119-4220-02, and to execute any documents required to be executed to accept such grant to be substantially in the form of Public Document No. _____ on file in the office of the city clerk.

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PARKS/ATTY TLL:blj 2/7/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to accept a grant from the Department of Natural Resources. The grant in the amount of \$25,000 will be used to purchase and plant trees to replace those lost to pests, disease and storms on Duluth's boulevards and in city parks.

GRANT APPLICATION AND APPROVAL FORM

Departments applying for a grant are requested to complete and submit this form, electronically or in person, to applicable individuals listed below. Department Director must certify cash match availability, when required, prior to pursuing grant proposal.

GRANT APPLICATION CONTACT: Kathleen Bergen Phone #: 730-4309	DEPARTMENT: Public Administration Parks and Recreation	(1) FUNDING REQUEST: \$25,000
FUNDING AGENCY: DNR – 2010 to 2012 Community Forest Bonding Grant	STATE OR FEDERAL GRANT #: don't know	(2) MATCH REQUIRED: ** none
PROJECT NAME Planting for Tomorrow	GRANT DUE DATE: November 19, 2010	(3) INKIND AMOUNT: ** \$9,000
TERM OF GRANT: February 1, 2011 – May 25, 2012	ARE THERE GRANT OBLIGATIONS? <input checked="" type="checkbox"/> YES ** <input type="checkbox"/> NO*	(4) TOTAL PROJECT AMOUNT: (1+2+3=4) \$34,000
APPROVED BY DEPARTMENT HEAD  Date <u>11/15/10</u>	Competitive: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Entitlement: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Continuation: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Other: _____	Match Budget Code: n/a

* If City obligations and/or a local match is not required as part of the grant award and/or the grantor does not require a formal authorization to apply, a department may seek Council approval for both the application and award or may apply and seek Council approval to accept the award.

** There is **NO MATCH REQUIREMENT** for these grant funds. However, proposals showing partial or full match with non-state cash or local in-kind contributions will be given greater consideration.

Brief Description of Grant:

Grants will be made for the planting of publicly owned shade trees on public land: to replace trees lost to forest pests, disease or storms and to establish a more diverse and resilient community forest. Priority will be given to grant requests to remove and replace ash trees with infestations of Emerald Ash Borer (EAB).

Since 2003, the City of Duluth has not planted boulevard or park trees due to lack of funding. The City subsequently lost its "Tree City USA" status. It is reapplying for that status during the latter part of 2010 as the City has updated its Tree Ordinance, began an inventory, and has a plan for EAB in place. Many trees have been removed since 2003 due to age or disease and literally hundreds of planting spaces exist. Once EAB gets to Duluth, it will lose an additional 4,700 ash trees, nearly a quarter of all trees on Duluth's streets. This grant will allow Duluth to diversify its street tree inventory and to replace important park ash trees prior to the arrival of EAB. "Planting for Tomorrow" is part of the TreeKeepers program in which citizen foresters are educated in various aspects of urban forestry, including tree planting and maintenance techniques. Most of these plantings will be on boulevards throughout the City of Duluth. However, large ash trees in important park locations are threatened by EAB and since their loss will be significant to the various, much-loved parks, pre-forestation of appropriate tree species are important, especially in riparian zones, which characterize many of Duluth's parks.

The goal of this grant will be to create a diverse urban forest by replacing the City's 4,700 important park and boulevard ash trees with ten or more native species which will help prevent future pests and diseases from devastating the City's urban forest. Citizen involvement will create a sense of ownership and protection for Duluth's Urban Forest and will assist the City in keeping costs to a minimum.

FOR AUDITORS USE:

FUND CODE FOR LOCAL MATCH : _____

FUND CODE FOR DEPOSIT OF GRANT FUNDS : _____

RETURN

CHIEF ADMINISTRATIVE OFFICER APPROVAL: XX Application approved Application **not** approved*

Reason NOT approved:

* If the grant application is not approved, return this form to the Department Director.

SUBMIT TO ATTORNEY'S OFFICE FOR DRAFTING AND/OR REVIEW

SUBMIT

RESOLUTION #(s) _____ Resolution Requested Review

RESOLUTION AUTHORIZING APPLICATION AND ACCEPTANCE

RESOLUTION AUTHORIZING APPLICATION

RESOLUTION AUTHORIZING ACCEPTANCE

IT IS ESSENTIAL THAT THE GRANT BUDGET BE ENTERED INTO THE ACCOUNTING SYSTEM USING THE REQUEST FOR NEW GRANT SET UP FORM . THIS FORM, THE COMPLETED GRANT, GRANT AGREEMENT, CERTIFIED RESOLUTION AND ANY OTHER PERTINENT INFORMATION MUST BE FILED WITH THE AUDITOR'S OFFICE, SO THE BUDGET CAN BE ENTERED INTO THE SYSTEM. WITHOUT A BUDGET, NO EXPENDITURES OR REVENUES WILL BE RECORDED!

Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155



January 21, 2011

City of Duluth,
4825 Mike Colalillo Drive
Duluth, MN 55807

Attention: Kelly Fleissner, City Forester

Dear Mr. Fleissner:

Enclosed are three copies of a pending Grant Agreement with the Department of Natural Resources, Division of Forestry. The start date of this agreement is February 1, 2011 or the date the contract is fully executed. This agreement runs through June 30, 2012.

Please have these agreements signed by those with the authority to sign contracts. Send all copies back to me and I'll secure the required state signature. After this Grant Agreement has been fully executed, I'll forward a copy to you.

Note Section 5.02, Conditions Precedent to Any Advance. In order for the Grant Contract to be fully executed, the DNR Division of Forestry must have received all items required in Section 5.02, including the following completed (and signed, where signatures are required) exhibits to the Grant Agreement:

- Attachment IA– CERTIFICATION*
 - Exhibit A to the Certification – General Description of Restricted Property – this is a narrative or graphic description of the property where the grant will be used.
- Attachment IB – DECLARATION*
 - Exhibit A to the Declaration – Legal Description of Restricted Property – this is a legal description of the property where the grant will be used.
- Attachment II - SOURCE AND USE OF FUNDS FOR THE PROJECT – this identifies all the sources of funds you will use to complete the project and all project costs.
- Attachment III - GRANT APPLICATION

* DNR's Community Forestry staff will review the scope of your project and advise you as to whether you need to execute a Certification, execute a Declaration and record it in the real property records, or both.

Questions or concerns should be directed to our technical staff - Ken Holman, DNR Bonding Grants Administrator, at 651-259-5269 or Andrea Dierich at 651-259-5295.

Sincerely,

A handwritten signature in cursive script that reads "Karen Bednarczyk".

Karen Bednarczyk
Contract Consultant

cc: Ken Holman and Andrea Dierich – Central Office

www.mndnr.gov

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**STATE OF MINNESOTA
GENERAL OBLIGATION BOND PROCEEDS
GRANT CONTRACT**

Accounting Information

Agency: R29	Fiscal Year: 10	Vendor Number: 036779001 00
Total Amount of Contract: \$25,000.00	Amount of First FY:	
Commodity Code: 023 09	Commodity Code:	Commodity Code:
Object Code: 5B20	Object Code:	
Amount: \$25,000.00	Amount:	Amount:

Acct Dist 1:	Acct Dist 2:	Acct Dist 3:
Fund: 500	Fund:	Fund:
Appr: 357	Appr:	Appr:
Org/Sub: 3727	Org/Sub:	Org/Sub:
Activity: 3505	Activity:	Activity:
Amount: \$25,000.00	Amount:	Amount:

Contract Number: B52118 Begin Date: February 1, 2011 End Date: June 30, 2012

Grant Name and Address for filing and payment purposes:

City of Duluth,
4825 Mike Colalillo Drive
Duluth, MN 55807

Attention: Kelly Fleissner, City Forester

General Obligation Bond Proceeds

Grant Agreement for Tree Removal and Replanting

THIS AGREEMENT shall be effective as of February 1, 2011 and is between City of Duluth, a political subdivision of the State of Minnesota (the "Public Entity"), and the Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155-4044 (the "DNR").

RECITALS

A. The DNR has created and is operating a diseased shade tree removal and replacement program (the "State Program") under the authority granted by Laws 2008, ch. 179, sec. 7, subdiv. 21 (the "State Program Enabling Legislation"). Under the State Program, the recipients of a grant must use such funds to identify, remove, dispose of and replace dead or dying shade trees located on public property that are lost to forest pests or disease.

B. Under the State Program, the DNR is authorized to provide grants that are funded with proceeds of state general obligation bonds authorized to be issued under Article XI, Sec. 5(a) of the Minnesota Constitution.

C. The Public Entity submitted a grant application to the DNR (the "Grant Application") attached as **Attachment III** in which the Public Entity requested a grant from the State Program, the proceeds of which will be used for the purposes set forth in such grant application.

D. The Public Entity has been selected by the DNR for a receipt of a grant from the State Program in an amount of \$25,000.00 (the "Program Grant"), which proceeds must be used by the Public Entity to perform those functions and activities imposed by the DNR under the State Program and set forth in the Grant Application.

E. The Public Entity's receipt and use of the Program Grant to improve real property (the "Real Property") will cause the Public Entity's ownership interest in all of the Real Property to become "state bond financed property", as such term is used in Minn. Stat. Sec. 16A.695 and in the "Third Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of Minnesota Management and Budget ("MMB") and dated August 26, 2010, as amended, even if such funds are being used to improve only a portion of the Real Property.

G. The Public Entity and the DNR desire to set forth herein the provisions relating to the granting and disbursement of the Program Grant to the Public Entity and the operation of the Real Property.

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 forth below, unless the context specifically indicates otherwise:

“Agreement” - means this General Obligation Bond Proceeds Grant Agreement for Tree Removal and Replanting.

“Certification” – if applicable, means a certification in the form attached as **Attachment IA**, in which the Public Entity acknowledges that its interest in all or part of the Real Property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695 and is subject to certain restrictions imposed thereby.

“Code” - means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Commissioner’s Order” - means the “Third Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of MMB and dated August 26, 2010, as amended.

“Declaration” - if applicable; means a declaration in the form attached as **Attachment IB**, indicating that the Public Entity’s ownership interest in the all or part of the Real Property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695 and is subject to certain restrictions imposed thereby.

“Event of Default” - means one or more of the events set forth in Section 2.05.

“G.O. Bonds” - means that portion of the state general obligation bonds issued under the authority granted in Article XI, Sec. 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the Program Grant, and any bonds issued to refund or replace such bonds.

“Project” - means the Public Entity’s identification, removal, disposal of and replacement of dead or dying shade trees located on the Real Property that are lost to forest pests or disease.

“Public Entity” - means the entity identified as the “Public Entity” in the lead-in paragraph of this Agreement.

“Real Property” - means the real property located in the County of St. Louis, State of Minnesota, legally described in Exhibit A to the Certification attached as **Attachment IA** and/or generally described in Exhibit A to the Declaration attached as **Attachment IB**.

“Useful Life of the Real Property” - means 30 years.

Article II GRANT

Section 2.01 Grant of Monies. The DNR shall make the Program Grant to the Public Entity and disburse the proceeds in accordance with the provisions of this Agreement. The Program Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the DNR or the Commissioner of MMB under certain circumstances.

Section 2.02 Public Ownership. The Public Entity acknowledges and agrees that the Program Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Property must be owned by one or more public entities. Such ownership may be in the form of fee ownership and/or an easement. In order to establish that this public ownership requirement is satisfied, the Public Entity represents and warrants to the DNR that it has, or will acquire, a fee simple and/or an easement

ownership interest in the Real Property, and, in addition, that it possesses, or will possess, all easements necessary for the operation, maintenance and management of the Real Property.

Section 2.03 Use of Grant Proceeds. The Public Entity shall use the Program Grant solely to reimburse itself for expenditures it has already made, or will make, for identification, removal, disposal of and replacement of dead or dying shade trees located on the Real Property that are lost to forest pests or disease, and may not use the Program Grant for any other purpose.

Section 2.04 Public Entity Representations and Warranties. The Public Entity represents and warrants to the DNR as follows:

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

B. It has legal authority to use the Program Grant for the purposes described in the State Program Enabling Legislation.

C. It has legal authority to operate the State Program and the Real Property for the purposes required by the State Program and for the functions and activities proposed in the Grant Application.

D. This Agreement and all other documents referred to herein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their terms.

E. It will comply with all of the terms and conditions of this Agreement and all other documents referred to herein.

F. It will comply with all of the provisions and requirements of Minn. Stat. Sec. 16A.695, the Commissioner's Order, and the State Program.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the Program Grant, and all of the information it has submitted or will submit to the DNR or the Commissioner of MMB relating to the Program Grant or the disbursement of the Program Grant is and will be true and correct.

H. 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, or its ownership interest therein, 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 Certification and/or the Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Certification and/or 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.

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

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

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

M. It has complied with the matching funds requirement contained in Section 6.20.

N. It will not, without the prior written consent of the DNR and the Commissioner of MMB, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Public Entity's ownership interest in the Real Property, whether such lien or encumbrance is superior or subordinate to the Declaration (if applicable).

O. It reasonably expects to possess the ownership interest in the Real Property described in Section 2.02 for the entire Useful Life of the Real Property, and it does not expect to sell such ownership interest.

P. It will supply whatever funds are needed above and beyond the amount of the Program Grant to complete and fully pay for the Project.

Q. For that portion of the Real Property (if any) as to which the State Entity or the Public Entity has received a waiver from MMB of the requirement that the Public Entity record a Declaration pursuant to Section 6.02(b) of the Commissioner's Order, the Public Entity will promptly execute a Certification and deliver a copy thereof to the DNR and to MMB (attention: Capital Budget Coordinator). For that portion of the Real Property (if any) as to which the Public Entity has not received a waiver from MMB of the requirement that it record a Declaration, it has or will promptly record a fully executed Declaration with the appropriate governmental office and deliver a copy thereof to the DNR and to MMB that contains all of the recording information.

R. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the DNR or the Commissioner of MMB.

Section 2.05 Events of Default. The following events shall, unless waived in writing by the DNR and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the DNR or the Commissioner of MMB giving the Public Entity 30 days written notice of such event and the Public Entity'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 Public Entity 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 unless otherwise consented to, in writing, by the DNR and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any other document furnished pursuant to this Agreement, or in order to induce the

DNR to disburse any of the Program Grant, 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 Public Entity fails to fully comply with any provision, condition, covenant, or warranty contained in this Agreement, the Certification and/or the Declaration, or any other document referred to herein.

C. If the Public Entity fails to fully comply with any provision, condition, covenant, or warranty in Minn. Stat. Sec. 16A.695, the Commissioner's Order, or the State Program Enabling Legislation.

D. If the Public Entity fails to provide and expend the full amount of the matching funds required for the Project under Section 6.20.

E. If the Public Entity fails to deliver the Certification and/or record and deliver the Declaration described in Section 2.04.Q.

Notwithstanding the foregoing, any of the events set forth above that cannot be cured shall, unless waived in writing by the DNR and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon either the DNR or the Commissioner of MMB giving the Public Entity written notice of such event.

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 DNR, the DNR or the Commissioner of MMB may enforce any or all of the following remedies.

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

B. If the Event of Default involves a failure to comply with any of the provisions contained herein other than the provisions contained in Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the Program Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner of MMB.

C. If the Event of Default involves a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Public Entity pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner of MMB.

D. Either the DNR or the Commissioner of MMB, 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 DNR or the Commissioner of MMB would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision of this Agreement within 30 days of demand by the Commissioner of MMB, or any

amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of the DNR and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or offset against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.07 Notification of Event of Default. The Public Entity shall furnish to the DNR and the Commissioner of MMB, as soon as possible and in any event within 7 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 Public Entity proposes to take with respect thereto.

Section 2.08 Survival of Event of Default. This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.10 and at the end of its term in accordance with Section 2.09.

Section 2.09 Term of Grant Agreement. This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property to the date on which the Real Property is first used for the operation of the Governmental Program after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property from the effect of this Agreement and the Declaration, if any.

Section 2.10 Modification and/or Early Termination of Grant. If the full amount of the Program Grant has not been disbursed on or before the date that is 5 years from the effective date of this Agreement, or such later date to which the Public Entity and the DNR may agree in writing, then the DNR's obligation to fund the Program Grant shall terminate. In such event, (i) if none of the Program Grant has been disbursed by such date, then the DNR's obligation to fund any portion of the Program Grant shall terminate and this Agreement shall terminate, and (ii) if some but not all of the Program Grant has been disbursed by such date, then the DNR shall have no further obligation to provide any additional funding for the Program Grant and this Agreement shall remain in full force and effect.

This Agreement shall also terminate upon the Public Entity's sale of its ownership interest in the Real Property in accordance with the provisions of Article III and transmittal of all or a portion of the proceeds of such sale to the Commissioner of MMB in compliance with Article III, or upon the termination of Public Entity's ownership interest in the Real Property if such ownership interest is by way of an easement. Upon such termination the DNR shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the Public Entity's ownership interest in the Real Property, from the effect of this Agreement, the Certification and/or the Declaration.

Section 2.11 Excess Funds. If the full amount of the Program Grant and matching funds referred to in Section 6.20, if any, are not needed to complete the Project, then, unless language in the State Program Enabling Legislation indicates otherwise, the Program Grant shall be reduced by the amount not needed.

**Article III
SALE**

The Public Entity shall not sell any part of its ownership interest in the Real Property unless all of the following have been complied with fully: (i) the sale is made as authorized by law, (ii) the sale is for fair market value (as defined in the Commissioner's Order), and (iii) the written consent of the Commissioner of MMB has been obtained. The proceeds of any such sale shall be distributed as set forth in Minn. Stat. Sec. 16A.695 and the Commissioner's Order.

**Article IV
COMPLIANCE WITH MINN. STAT. SEC. 16A.695
AND THE COMMISSIONER'S ORDER**

Section 4.01 **State Bond Financed Property.** The Public Entity and the DNR acknowledge and agree that the Public Entity's ownership interest in the Real Property is, or when acquired by the Public Entity will be, "state bond financed property", as such term is used in Minn. Stat. Sec. 16A.695 and the Commissioner's Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Public Entity's ownership interest in the Real Property.

Section 4.02 **Preservation of Tax Exempt Status.** In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or use or invest the Program Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

B. It will deposit into and hold all of the Program Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner of MMB all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the GO Bonds.

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty, that could cause the interest on the GO Bonds to no longer be tax exempt and upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the Program Grant, including earnings thereon, if any, or 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 G.O. Bonds, nor 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 4.03 **Changes to Minn. Stat. Section 16A.695 or the Commissioner's Order.** If the G.O. Compliance Legislation or the Commissioner's Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity's ownership interest in the Real Property is exempt from the G.O. Compliance Legislation and the Commissioner's Order, then upon written request by the Public Entity the DNR shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Public Entity's ownership interest in the Real Property from Minn. Stat. Sec. 16A.695 or the Commissioner's Order.

Article V DISBURSEMENT OF GRANT PROCEEDS

Section 5.01 **Disbursement of Grant.** Upon compliance with all of the conditions set forth in Section 5.02, the DNR shall disburse the Program Grant to the Public Entity in one lump sum. The DNR's obligation to disburse any of the Program Grant shall terminate as of the date specified in such Section even if the entire Program Grant has not been disbursed by such date.

The Program Grant shall only be for expenses that (i) are for those items of a capital nature for the Project, (ii) accrued no earlier than the effective date of the legislation that appropriated the funds that are used to fund the Program Grant, or (iii) have otherwise been consented to, in writing, by the DNR and the Commissioner of MMB.

Section 5.02 **Conditions Precedent to Disbursement of Grant.** The obligation of the DNR to disburse the Program Grant to the Public Entity is subject to the following conditions precedent:

A. The DNR shall have received a request for disbursement of the Program Grant specifying the amount of funds being requested, which such amount shall not exceed the amount of the Program Grant set forth in Recital D.

B. The DNR shall have received a duly executed Certification and/or Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon.

C. The DNR shall have received evidence acceptable to the DNR that (i) the Public Entity has legal authority to and has taken all actions necessary to enter into this Agreement, the Certification and/or the Declaration, and (ii) this Agreement, the Certification and/or and the Declaration are binding on and enforceable against the Public Entity.

D. The DNR shall have received evidence acceptable to the DNR that the Public Entity has completely paid for the Project and all other expenses that may occur in conjunction therewith.

E. The DNR shall have received evidence acceptable to the DNR that the Public Entity is in compliance with the matching funds requirements in Section 6.20, if any, and that all of such matching funds have been expended for the Project.

F. The DNR shall have received evidence acceptable to the DNR that all required permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or

those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

G. 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.

H. The Public Entity has supplied to the DNR all other items that the DNR may reasonably require.

Article VI MISCELLANEOUS

Section 6.01 Condemnation. If after the Public Entity has acquired the ownership interest set forth in Section 2.02, all or any portion of the Real Property is condemned, any condemnation proceeds which are not used to acquire an interest in additional real property needed by the Public Entity to continue its use of the remaining Real Property shall be applied in accordance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order as if the condemned portion of the Public Entity's ownership interest in the Real Property had been sold. If the Public Entity elects to sell its ownership interest in the remaining portion of the Real Property, such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As recipient of any of the condemnation proceeds referred to herein, the DNR agrees to and will disclaim, assign or pay over to the Public Entity all of such condemnation proceeds it receives so that the Public Entity can comply with the requirements of this Section.

Section 6.02 Record Keeping and Reporting. The Public Entity shall maintain books, records, documents and other evidence pertaining to the costs or expenses associated with the Project needed to comply with the requirements of this Agreement, Minn. Stat. Sec. 16A.695, the Commissioner's Order, and the State Program Enabling Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the DNR, auditors for the DNR, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit or copy all of such items. The Public Entity shall use generally accepted accounting principles in the maintenance of such items, and shall retain all of such items for a period of 6 years from the date that the Project is fully completed.

Section 6.03 Inspections by DNR. Upon reasonable request by the DNR and without interfering with the normal use of the Real Property, the Public Entity shall allow the DNR to inspect the Real Property.

Section 6.04 Data Practices. The Public Entity agrees with respect to any data that it possesses regarding the Program Grant or the Project to comply with all of the provisions of the Minnesota Government Data Practices Act contained in Minn. Stat. Chapter 13.

Section 6.05 Non-Discrimination. The Public Entity agrees to not engage in discriminatory employment practices regarding the Project, and it shall fully comply with all of the provisions contained in Minn. Stat. Chapters 363A and 181.

Section 6.06 **Worker's Compensation.** The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. Secs. 176.181 subd. 2 and 176.182 with respect to the Project.

Section 6.07 **Antitrust Claims.** The Public Entity hereby assigns to the DNR and the Commissioner of MMB all claims it may have for over charges as to goods or services provided with respect to the Project, and operation or management of the Real Property that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 6.08 **Legislative Notification.** Prior to beginning work on the Project, the Public Entity shall notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee that the work to be performed is ready to begin.

Section 6.09 **Prevailing Wages.** The Public Entity agrees to comply with all of the applicable provisions contained in Minn. Stat. Chapter 177, and specifically those provisions contained in Minn. Stat. Secs. 177.41 through 177.435 with respect to the Project.

Section 6.10 **Liability.** The Public Entity and the DNR agree that they will be responsible for their own acts and the results thereof to the extent authorized by law, and neither shall be responsible for the acts of the other party and the results thereof. The liability of the DNR and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. Sec. 3.736. If the Public Entity is a "municipality" as such term is used in Minn. Stat. Chapter 466, then the liability of the Public Entity is governed by the provisions of such Chapter 466.

Section 6.11 **Relationship of the Parties.** Nothing 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 Public Entity, the DNR, or the Commissioner of MMB, nor shall the Public Entity be considered to be an agent, representative, or employee of the DNR, the Commissioner of MMB, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property.

The Public Entity represents that it has already or will secure all personnel required for the performance of this Agreement and the Project. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement and the Project shall have no contractual relationship with the DNR, the Commissioner of MMB, 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 Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of the DNR, the Commissioner of MMB, 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 the DNR, the Commissioner of MMB, 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 6.12 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity at:

City of Duluth,
4825 Mike Colalillo Drive
Duluth, MN 55807
Attention: Kelly Fleissner, City Forester

To the DNR at:

Minnesota Department of Natural Resources
Division of Forestry
500 Lafayette Road
St. Paul, MN 55155
Attention: Ken Holman, Community Forest Program Coordinator

To the Commissioner of MMB at:

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

Section 6.13 **Binding Effect and Assignment or Modification.** This Agreement and the Certification and/or the Declaration shall be binding upon and inure to the benefit of the Public Entity and the DNR, and their respective successors and assigns. Provided, however, that neither the Public Entity nor the DNR may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Certification and/or the Declaration shall be binding on either the Public Entity or the DNR unless such change or modification is in writing and signed by an authorized official of the party or against which such change or modification is to be imposed.

Section 6.14 **Waiver.** Neither the failure by the Public Entity, the DNR, or the Commissioner of MMB, 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 Public Entity, the DNR, or the Commissioner of MMB, 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 the Public Entity, the DNR, or the Commissioner of MMB, 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 6.15 **Entire Agreement.** This Agreement, the Certification and/or the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Public Entity and the DNR, and there are no other agreements, either oral or written, between the Public Entity and the DNR on the subject matter hereof.

Section 6.16 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Certification and/or the Declaration 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 6.17 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 6.18 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 6.19 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 6.20 **Matching Funds.** The Public Entity must obtain and supply the following matching funds for the Project: None.

Section 6.21 **Source and Use of Funds.** The Public Entity represents to the DNR and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

- A. The total cost of the Project.
- B. The source and amount of all funds needed to complete the Project, including:
 - (i) State funds including the Program Grant,
 - (ii) Matching funds,
 - (iii) Other funds supplied by the Public Entity,
 - (iv) Loans, identifying each such loan and all collateral pledged for repayment of each such loan and
 - (v) Other funds.
- C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

Previously paid project expenses (that is, project expenses paid before the effective date of this Agreement) that are to be reimbursed and paid from proceeds of the Program Grant may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner of MMB. If any of the funds included under the source of funds have conditions precedent to the release of such funds, the Public Entity must provide to the DNR and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

The Public Entity shall also supply whatever other information and documentation that the DNR or the Commissioner of MMB may request to support or explain any of the information contained in **Attachment III**.

Section 6.22 **Third-Party Beneficiary.** The State Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the DNR and the State of

Minnesota. Therefore, the State of Minnesota, by and through the Commissioner of MMB, is a third-party beneficiary of this Agreement.

Section 6.23 Public Entity Tasks. Any tasks that this Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 6.24 DNR and Commissioner Required Acts and Approvals. The DNR and the Commissioner of MMB shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

Section 6.25 E-Verification. The Public Entity agrees and acknowledges that it is aware of Governor's Executive Order 08-01 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 order and impose a similar requirement in any Use Agreement to which it is a party.

Section 6.26 Additional Requirements. The Public Entity and the DNR agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control:

NONE

(The remainder of this page was intentionally left blank)

IN TESTIMONY HEREOF, the Public Entity and the DNR have executed this General Obligation Bond Proceeds Grant Agreement for Tree Removal and Replanting under the diseased shade tree removal and replacement program on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

City of Duluth, a political subdivision of the State of Minnesota

By: _____

Name: _____

Its: _____

Dated: _____

By: _____

Name: _____

Its: _____

Dated: _____

STATE ENTITY:

DEPARTMENT OF NATURAL RESOURCES

By: _____

Name: Robert Tomlinson

Its: Assistant Director, Division of Forestry

Dated: _____

ENCUMBERED:


Accounting Officer Senior

Dated: 1/21/11

CFMS Contract #B52118

ATTACHMENT IA

CERTIFICATION

**State of Minnesota
General Obligation Bond Financed Property**

The undersigned has a fee simple and/or easement interest in the real property located in the County of St. Louis, State of Minnesota that is generally described or illustrated graphically in **Exhibit A** attached and all facilities situated thereon (the "Restricted Property") and acknowledges that the Restricted Property is State bond-financed property. The undersigned acknowledges that:

- A. The Restricted Property is state bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget;
- B. The Restricted Property is subject to the provisions of the General Obligation Bond Proceeds Grant Agreement for Tree Removal and Replanting between the Department of Natural Resources and _____ dated _____, and _____, and
- C. The Restricted Property shall continue to be deemed state bond financed property for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget.

Date: _____, 20____

City of Duluth, a political subdivision of the State of Minnesota

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Exhibit A to Certification

GENERAL DESCRIPTION OF RESTRICTED PROPERTY

[Insert a narrative or graphic description of the Restricted Property. It need not be a legal description.]

ATTACHMENT IB

DECLARATION

**State of Minnesota
General Obligation Bond Financed Property**

The undersigned has the following interest in the real property located in the County of St. Louis, State of Minnesota that is legally described in **Exhibit A** attached and all facilities situated thereon (collectively referred to as the "Restricted Property"):

(Check the appropriate box.)

a fee simple title, or

an easement,

and as owner of such fee title or easement, does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in the General Obligation Bond Proceeds Grant Agreement for Tree Removal and Replanting between the Department of Natural Resources and _____ dated _____ (the "G.O. Grant Agreement").

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Property Declaration for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget, at which time it shall be released therefrom by way of a written release in recordable form signed by both the Commissioner of the Department of Natural Resources and the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota Management and Budget.

City of Duluth, a political subdivision of the State of Minnesota

By: _____

Name: _____

Title: _____

Dated: _____, 20__

STATE OF MINNESOTA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____, by _____, the _____ of _____, a political
subdivision of the State of Minnesota.

Notary Public

This instrument was drafted by:
Ken Holman
Community Forest Program Coordinator
Minnesota Department of Natural Resources
Division of Forestry
500 Lafayette Road
St. Paul, MN 55155

Exhibit A to Declaration
LEGAL DESCRIPTION OF RESTRICTED PROPERTY

ATTACHMENT II

SOURCE AND USE OF FUNDS FOR THE PROJECT

Source of Funds		Use of Funds	
Identify Source of Funds	Amount	Identify Items	Amount
State GO Funds		Items Paid for with	
Program Grant	\$	Program Grant Funds	
			\$
			\$
			\$
			\$
Subtotal	\$	Subtotal	\$
Matching Funds		Items Paid for with	
	\$	Non-Program Grant Funds	
	\$		\$
	\$		\$
Subtotal	\$		\$
Other Public Entity Funds		Subtotal	\$
	\$		
	\$		
Subtotal			
Loans			
	\$		
	\$		
Subtotal	\$		
Other Funds			
	\$		
	\$		
Subtotal	\$		-
Prepaid Project Expenses			
	\$		
	\$		
Subtotal	\$		
TOTAL FUNDS	\$	TOTAL PROJECT COSTS	\$

ATTACHMENT III
GRANT APPLICATION