

COUNCIL COPY

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0232R

RESOLUTION APPROVING A BUILDING IN DULUTH 2011
CONDITIONAL GRANT AGREEMENT BETWEEN THE DULUTH ECONOMIC
DEVELOPMENT AUTHORITY AND OLD CITY HALL, LLC RELATING TO
THE HISTORIC RENOVATION OF OLD CITY HALL AND THE LANGE
MOTORS BUILDING.

CITY PROPOSAL:

RESOLVED, that the city council of the city of Duluth does hereby approve the conditional grant agreement on file in the office of the city clerk as Public Document No. _____, between the Duluth economic development authority (DEDA) and Old City Hall, LLC, relating to the historic renovation of the old city hall building and subsequent historic renovation of a portion of the exterior of the Lange Motors building in an amount not to exceed \$350,000.

Approved:



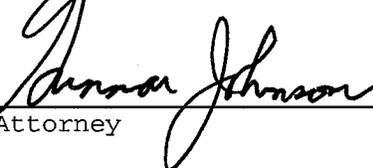
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

DEDA/ATTY JC:dma 04/29/2011

STATEMENT OF PURPOSE: The purpose of this resolution is to obtain the City Council's approval of the Duluth 2011 Conditional Grant Agreement between DEDA and Old City Hall, LLC as is required pursuant to the business subsidy law, Minnesota Statute Section 116J.994 Subd. 3(d) and Paragraph 19 of the amended DEDA Enabling Legislation, Resolution 09-0324. DEDA approved the Agreement at its April 27, 2011 meeting.

The primary goal for DEDA's assistance is the historic renovation of two Old Downtown landmarks: Old City Hall Building (1888 to 1929) and the Lange Motors

Building, most recently known as the Carlson Bookstore. In exchange for this assistance, Old City Hall, LLC has committed to the creation of 12 FTE construction jobs. It is anticipated that over 30 individuals will be working on the renovation of the two projects. In addition to creating construction jobs and renovating these blighted buildings, it is anticipated that several new business tenants will create permanent jobs and contribute to the arts and entertainment theme of Old Downtown. The 18,000 s.f. Old City Hall Building project will house a restaurant, meeting space and fitness studio. The 30,000 s.f. Lange Motors Building renovation plans are still in development, but they include a café, brew pub, bakery, meeting/event center and sound studio. The estimated annual new property tax revenue to the City from this project is \$1,840. This Agreement commits Old City Hall, LLC to maintain operations for a period of ten years or be subject to repaying the conditional grant based on a ten-year sliding scale. This commitment is backed by mortgage liens on both buildings.

**BUILDING IN DULUTH 2011
CONDITIONAL GRANT AGREEMENT
OLD CITY HALL, LLC**

THIS CONDITIONAL GRANT AGREEMENT entered into this ___ day of _____, 2011, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, whose address is 402 City Hall, 411 West First Street, Duluth, MN 55802 (hereinafter referred to as "DEDA") and OLD CITY HALL, LLC, a Minnesota limited liability company, whose address is 132 East Superior Street, Duluth, MN 55802 (hereinafter referred to as "Developer").

WHEREAS, Developer desires to renovate the Old City Hall Building to the historic rehabilitation standards of the U.S. Department of the Interior which building will house a restaurant, meeting space and fitness studio, said historic renovation intended to garner state and federal historic tax credits the syndication of which will provide equity to the Developer which it will use to renovate a portion of the exterior of the Lange Motor Building, most recently known as the Carlson Bookstore, to the same historic rehabilitation standards, and in the process to create construction work for up to 18 people with respect to the Old City Hall Project which equates to 6 full-time equivalent construction jobs in Minnesota and to further create construction work for up to 15 people with respect to the Lange Motor Building Project which equates to 6 full-time equivalent construction jobs in Minnesota; and

WHEREAS, Developer has requested assistance from DEDA for costs related to the renovation of the Old City Hall Building since without such assistance the renovation to historic standards at this time would not be economically viable; and

WHEREAS, Minnesota Statutes §469.176 was amended in 2010 to authorize cash balances in existing tax increment districts, such as Redevelopment TIF District No. 20, to be used to spur new construction or substantial rehabilitation of buildings if (i)

doing so will create or retain jobs in the state, including construction jobs and (ii) the construction begins before July 1, 2011;

WHEREAS, Developer meets the criteria set forth in Minnesota Statutes §469.176 as well as the Building in Duluth 2011 Spending Plan for Tax Increment Financing Districts on file in the office of DEDA; and

WHEREAS, DEDA has further determined that the interests of the citizens of the City of Duluth and the well being and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the renovation of the Buildings by Developer; and

WHEREAS, after careful analysis of the projected costs of the Old City Hall Project and of the financial resources available and economic feasibility to pay for the renovation and other costs related to the Old City Hall Project described herein, Developer has represented to DEDA that:

- a. A "gap" exists at this time between the cost to Developer of renovating the Old City Hall Building to the Standards for Rehabilitation and the funds presently available to or known to Developer to finance those costs at rates that would be economically feasible. Based on the best estimates currently available to Developer, the amount of said "gap" equals \$350,000. In order to reduce this "gap", DEDA has committed to provide tax increment proceeds from TIF District No. 20;
- b. Without the assistance to be provided by DEDA hereunder, the cost of renovating the Old City Hall Building to the Standards for Rehabilitation at this time would be more than can be justified and that, therefore, this Project would not be economically feasible for Developer without DEDA assistance;
- c. There are no available and affordable sources of other governmental programs or funds at this time to meet the needs addressed under this Agreement known to Developer to fund the aforesaid "gap;"
- d. There is no private market financing known at this time to Developer available at rates which would eliminate said "gap" on terms which are economically feasible;

- e. Without the tax increment assistance to be provided pursuant to this Agreement, the available resources would be inadequate and not economically feasible to commence renovation of the Old City Hall Building to the Standards for Rehabilitation and that therefore, but for the tax increment assistance to be provided for hereunder, the historic renovation of the Old City Hall Building would not be commenced before July 1, 2011; and

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is the renovation of Buildings which will: 1) contribute to the economic diversity of the City by supporting the existing industries of retail sales as well as tourism and service (Old City Hall Building); 2) enhance the quality of life of City residents by investing in neglected business areas and redeveloping blighted areas; and 3) increase the tax base; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Arrowhead Abstract shall mean Arrowhead Abstract & Title Co. located at 314 East Superior Street in Duluth, MN which shall act as the escrow agent for monies to be used solely for purposes of the Lange Motor Building Project.
- B. Building shall mean either the Old City Hall Building or the Lange Motor Building.
- C. Buildings shall mean the Old City Hall Building and the Lange Motors Building.
- D. City shall mean the City of Duluth.
- E. Closing shall mean the point at which an investor first provides equity in exchange for the ability to claim state or federal historic tax credits related to the Old City Hall Project.

- F. Eligible Project Costs shall mean the costs of the renovation of the Old City Hall Building, including historic components, which are permitted to be reimbursed under Minnesota Statutes §469.176 and estimated to be \$1,864,179, of which up to \$350,000 may be reimbursed by DEDA.
- G. Executive Director shall be the Executive Director of DEDA or such person or persons designated in writing by said Executive Director.
- H. Full-time Equivalent or FTE shall mean employment positions within the State providing 2,080 hours of employment per year unless, prior to job creation, Developer provides documentation showing industry standards vary from 2,080 hours per year.
- I. Standards for Rehabilitation shall mean the U.S. Department of Interior's regulations for historic rehabilitation found at 36 C.F.R 67.
- J. Interest shall mean the interest rate set at the implicit price deflator defined under Minnesota Statutes §275.70, subdivision 2.
- K. Lange Motor Building shall mean the 30,000 s.f. building located at 206 East Superior Street in Duluth and most recently known as the Carlson Bookstore.
- L. Lange Motor Building Project shall mean historic renovation of a portion of the exterior of the Lange Motor Building to U.S. Department of Interior Standards for Rehabilitation, specifically the Superior Street and Michigan Street facades, the cost of historic renovation of said facades which is estimated to be at least \$350,000.
- M. Lange Motor Building Property shall mean that property located at 206 East Superior Street in Duluth, St. Louis County, Minnesota, which Property is legally described as Lots 36 and 38, Block 1, Central Division of Duluth and the E'ly 1 foot of Lot 34, Block 1, Central Division of Duluth.
- N. Old City Hall Building shall mean the 18,000 s.f. building located at 132 East Superior Street in Duluth to be leased for purposes of housing a restaurant, meeting space and fitness studio.
- O. Old City Hall Project shall mean the renovation of the Old City Hall Building to U.S. Department of the Interior Standards for Rehabilitation for

the purpose of leasing the same to house a restaurant, meeting space and fitness studio, the cost of historic renovation which is estimated to be \$388,126 and the total Project cost of which is estimated to be \$1,864,179.

- P. Old City Hall Property shall mean that property located at 132 East Superior Street in Duluth, St. Louis County, Minnesota, which Property is legally described as Lot 32, Block 2, Central Division of Duluth.
- Q. Project shall mean either the Lange Motor Building Project or the Old City Hall Project.
- R. Projects shall mean the Lange Motor Building Project and the Old City Hall Project.
- S. Property shall mean either the Lange Motor Building Property or the Old City Hall Property.
- T. Properties shall mean the Lange Motor Building Property and the Old City Hall Property.
- U. SHPO shall mean the Minnesota State Historic Preservation Office.
- V. Tax Credit Equity shall mean the amount of at least \$350,000 provided from a tax credit investor through the syndication of historic tax credits related to the Old City Hall Building.

ARTICLE II

Developer Deposit

In consideration of the financial assistance provided by DEDA to Developer pursuant to the terms of this Agreement, Developer has paid to DEDA an application fee deposit of Three Thousand and No/100 Dollars (\$3,000.00).

ARTICLE III

Preconditions to Project Construction

Prior to the commencement of renovation of either the Old City Hall Project or the Lange Motor Building Project and as a precondition to the commencement of renovation of either, Developer shall provide to DEDA the following items:

- A. Title
Proof reasonably satisfactory to DEDA that Developer owns the respective Property in fee simple absolute.
- B. Construction Costs
Approved (pursuant to Article IV) plans, specifications and elevations for the renovation of the respective Project.
- C. Construction Contracts
A copy of executed contracts between Developer and a general contractor necessary to complete the renovation of the respective Project in accordance with approved plans, specifications and elevations, certified by Developer to be a true and correct copy thereof.
- D. Contractor Approval
Developer agrees that the Executive Director shall have approval over the identity of the general contractors for each Project, which approval shall not be unreasonably withheld. The Executive Director hereby approves Keupers, Inc. as the general contractor for the Old City Hall Project.
- E. Construction Bonds
Copies of executed payment bond and an executed performance bond provided by the above general contractor in connection with the renovation of the respective Project which bonds shall be in the penal amount of not less than one hundred percent (100%) of the contract price under said construction contracts written by a bonding company or bonding companies licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof which name DEDA as an additional beneficiary thereof, or other evidence satisfactory to the Executive Director of the ability of the Developer to complete the respective Project.
- F. Construction Financing
Copies of loan commitments and other financing commitments in forms reasonably acceptable to DEDA obtained by Developer together with evidence of the extent of Developer's equity participation in the respective

Project, the total of said commitments and said equity participation to be in an amount not less than the total contract price between Developer and its general contractor for the respective Project as described in the contract described in Paragraph C above.

ARTICLE IV

Project Plans

A. Plans, Specifications and Elevations

No less than 30 days prior to the commencement of renovation of the respective Project, or such lesser time as approved by the Executive Director, and to the extent deemed necessary by the Executive Director, Developer shall submit working drawings, specifications and elevations together with detailed site grading, utility and landscaping plans and elevations to the Executive Director for approval, which approval will not be unreasonably withheld. All such plans, specifications and elevations shall be in conformity (i) with this Agreement, (ii) with the schematic design which shall consist of drawings and other documents illustrating scale and relationship of various Project components, (iii) with the Standards for Rehabilitation, and (iv) with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United States of America. The Executive Director shall review and approve or disapprove of such plans, specifications and elevations within 10 days of submission of same by Developer. If the Executive Director rejects such plans, specifications and elevations in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within 10 days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected plans hereinafter provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and

elevations have been approved by the Executive Director. The Executive Director's acceptance of Developer's plans, specifications and elevations shall not constitute a waiver of building code or ordinance or other developmental duties imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with said plans, specifications and elevations and any revisions thereto.

B. Changes After Initial Approval

Any changes made to plans by Developer after initial approval of the Executive Director shall be submitted to the Executive Director for acceptance in the same manner provided for in Paragraph A above.

ARTICLE V

Renovation of the Buildings

A. Renovation of the Old City Hall Building

On or before June 30, 2011, Developer shall cause the commencement of the Old City Hall Project in conformance with the Standards for Rehabilitation and the plans approved pursuant to this Agreement. Said renovation work shall be completed not later than December 31, 2011.

B. Renovation of the Lange Motor Building

On or before December 31, 2012, Developer shall cause the commencement of the Lange Motor Building Project in conformance with the Standards for Rehabilitation and the plans approved pursuant to this Agreement. Said renovation work shall be completed not later than December 31, 2013.

C. Developer to Bear All Costs

Except for payments by DEDA provided for herein, Developer specifically guarantees and agrees to bear all costs related to the Projects and any modifications thereto.

D. Progress Reports

Until the entirety of each Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be

requested by DEDA as to the actual progress of Developer with respect to such Project.

E. Certificate of Completion

Promptly upon completion by Developer of each Project, Developer shall submit to the Executive Director written evidence in a form satisfactory to the Executive Director of respective Project completion in accordance with this Agreement after which DEDA shall promptly furnish to Developer an appropriate certificate certifying completion of the respective Project ("Certificate of Completion"). No such Certificate shall be issued until all elements of the respective Project have been completed. Upon receipt of a Certificate of Completion, Developer agrees to file such Certificate in the Office of the St. Louis County Recorder and/or Registrar of Titles (as applicable) and pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA an executed original of the Certificate of Completion showing the date and document numbers of record, or duly certified copies of the filed originals.

ARTICLE VI

Reimbursement to Developer

DEDA agrees to reimburse Developer for Eligible Project Costs incurred by it in accordance with this Agreement in an amount not to exceed Three Hundred Fifty Thousand and no/100ths (\$350,000) payable from Fund 865, TIF District 20. Reimbursement shall be made on a pro rata basis of Eligible Project Costs incurred with DEDA reimbursing 20% of Eligible Project Costs for every 80% of Eligible Project Costs paid by sources other than DEDA. Requests for reimbursement shall be made no more frequently than monthly and shall be accompanied by such documentation DEDA shall request including paid invoices or comparable evidence of payment. DEDA will not reimburse Developer for costs incurred more than sixty (60) days prior to the date of Developer's request. Notwithstanding the above, no reimbursement shall be made to Developer by DEDA after December 31, 2011.

ARTICLE VII

Historic Tax Credits

With respect to the Old City Hall Project, Developer agrees that on or before April 1, 2012, it shall have (i) applied for federal and state historic tax credits with SHPO; (ii) received approval from the National Park Service of Part 3 of the application for historic tax credits and, therefore, approval of the Old City Hall Building as a “certified rehabilitation” of a “certified historic structure”; (iii) secured a tax credit investor; and (iv) completed the Closing. The equity from the tax credit investor shall be in the amount of at least \$350,000. Developer shall cause at least \$350,000 of the monies received from the tax credit investor at and subsequent to Closing to be directly wired into an escrow account with Arrowhead Abstract, said monies to be used solely for the Lange Motor Building Project.

Alternatively, prior to commencement of the Lange Motor Building Project, and whether or not a Closing has occurred, Developer shall cause the amount of \$350,000 from other funding sources to be deposited into an escrow account with Arrowhead Abstract, said monies to be used solely for the Lange Motor Building Project.

Developer shall give the Executive Director 15 days’ prior written notice of the Closing. The escrow agreement shall be substantially in the form of that attached hereto as Exhibit A. The Executive Director shall be a signatory to the escrow agreement. All disbursements from the escrow account shall require the prior written approval of the Executive Director.

ARTICLE VIII

Mortgage Lien

Developer agrees that there is hereby created and imposed on the Properties a mortgage lien (the “Mortgage Lien”). The amount of the Mortgage Lien shall be the amount of Three Hundred Fifty Thousand and no/100ths (\$350,000) Dollars. The Mortgage Lien shall be exercisable by DEDA upon a General Event of Default by the Developer as defined herein. It is agreed between the parties that this Agreement and the Mortgage Lien imposed herein shall be deemed to run with the land and all of its provisions shall be enforceable by the parties’ respective heirs and assigns. The Mortgage Lien on the Old City Hall Building shall be in force and effect for a period of

ten (10) years from the date of filing in the St. Louis County Recorder's Office of the Certificate of Completion for the Old City Hall Project. The Mortgage Lien on the Lange Motors Building shall be in force and effect during the term of this Agreement as set forth herein. DEDA may, in its sole discretion and through the written consent of the Executive Director, decide to subordinate the Mortgage Lien to liens of other parties.

Upon execution of this Agreement by all parties, Developer shall record this Agreement in the office of the St. Louis County Recorder and/or the Registrar of Titles (as applicable) and shall pay all costs associated therewith. Upon recording, Developer shall immediately submit to DEDA an executed original of this Agreement showing the date and document numbers of record, or a duly certified copy of the filed original.

DEDA acknowledges that Developer, on or before December 1, 2011, will obtain a loan in the approximate amount of \$1,094,000 (the "SBA Loan") from the U.S. Small Business Administration (the "SBA"), which loan will be used to pay in full Developer's existing temporary construction loan from Beacon Bank in the amount of \$1,010,000, plus related costs and fees of the SBA Loan. DEDA further acknowledges that (i) the SBA will place a mortgage lien on the Old City Hall Property and other land owned by Developer (the "SBA Mortgage"), and (ii) in order for Developer to remain eligible for the SBA Loan, DEDA must subordinate its Mortgage Lien to the SBA Mortgage. DEDA hereby consents to Developer obtaining the SBA Loan and granting the SBA Mortgage, and agrees that it will enter into a subordination agreement with the SBA, in a form acceptable to DEDA and the SBA, subordinating its Mortgage Lien to the SBA Mortgage.

DEDA further acknowledges and consents to the existing mortgage lien on the Old City Hall Property in favor of Beacon Bank in the original principal amount of \$1,220,000.

ARTICLE IX

Term

The term of this Agreement shall commence on the date first shown above and shall continue for a period of ten (10) years from the date of filing in the St. Louis County Recorder's Office of the Certificate of Completion for the Lange Motor Building as set

forth in Paragraph E of Article V, unless this Agreement is otherwise terminated earlier as provided for herein.

ARTICLE X

Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

Developer shall not permit or allow any mechanics' or materialmen's liens to be filed or established or to remain against the Buildings, the Properties or the Projects or any part thereof provided that if Developer shall first notify DEDA of its intention to do so and post such security as the Executive Director reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context; provided however, in the event a private lender also requests security with respect to such lien(s), DEDA agrees that it may be jointly protected with said lender by the same security, the amount of which shall be the greater of that security requested by the Lender or the Executive Director. Except for: 1) a primary mortgage or mortgages relating solely to the financing of each Project given to private lenders; or 2) other liens or encumbrances excluding mechanics' liens or materialmen's liens (which are addressed above) allowed in advance writing by the Executive Director, including the SBA Mortgage consented to in Article VIII above, Developer shall not create or permit any mortgage or encumbrance to be filed or established or to remain against the Buildings, the Properties, or the Projects or any part thereof.

B. Provision Against Assignments, Transfers or Change in Identity of Developer

The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, operate and maintain the Projects, the Buildings and the Properties. Therefore, except (i) as may be approved in writing in advance by the Executive Director, and

except (ii) for the purposes of obtaining private financing as described in Paragraph A above, Developer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the managing members or principals of Developer or their respective percentages of ownership or voting rights if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Properties, the Buildings, the Projects, Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder. If any assignment of Developer's obligations under this Agreement is approved by the Executive Director, any such assignee shall explicitly assume the obligations of Developer under this Agreement and Developer remains principally liable for the performance of Developer's obligations under this Agreement. Notwithstanding the above, Developer is authorized to lease the Buildings to Just Take Action, Inc. Additionally, the Parties understand that it may be necessary for the Developer to create separate ownership entities for the Old City Hall Property and the Lange Motor Property in order to allow Developer to obtain state and federal historic tax credits, and in such event, the Executive Director intends to approve a change in the entities with the new entities assuming the obligations of Developer under this Agreement.

C. Notice of Sale, Transfer or Change in Use

Developer agrees for itself and its successors and assigns that it will provide at least ninety (90) days' written notice to DEDA of any total or partial sale, assignment, trust, power of attorney, liens except those for the purposes of obtaining private financing as described in Paragraph A , or conveyances of the Buildings, the Properties or the Projects, or of any

change in the identity of the managing members or principals of Developer or their respective percentages of ownership or voting rights if such change would result in a change of control of Developer, or of any change in use of the Old City Hall Building.

ARTICLE XI

Development Goals/Reporting Obligations

A. Business Subsidy Goal

DEDA finds that the public purpose of tax increment assistance to be provided pursuant to this Agreement is the renovation of Buildings which will: 1) contribute to the economic diversity of the City by supporting the existing industries of retail sales as well as tourism and service (Old City Hall Building); 2) enhance the quality of life of City residents by investing in neglected business areas and redeveloping blighted areas; and 3) increase the tax base. Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Developer agrees that on or before December 31, 2011, it shall have completed the Old City Hall Project and that on or before December 31, 2013, it shall have completed the Lange Motor Building Project in accordance with this Agreement and shall have created 12 FTE construction jobs in the State on or before December 31, 2013, as verified by Developer's construction contractor(s) (the "Business Subsidy Goal").

B. Reporting Requirement

Developer shall provide to DEDA the information regarding the Business Subsidy Goal as set forth in Minnesota Statute §116J.994 subdivision 7. All such reports shall be signed on behalf of Developer by an officer of Developer with authority to bind Developer.

C. Special Event of Default if Business Subsidy Goals Not Met

Developer agrees that if the Business Subsidy Goal of (i) the Old City Hall Project is not met by December 31, 2011, or (ii) the Lange Motor Building Project is not met by December 31, 2013, as determined in the sole discretion of DEDA, Developer shall repay all sums paid to Developer plus

Interest compounded semiannually. If the Business Subsidy Goal of creating 12 FTE construction jobs is not met or only met in part as determined in the sole discretion of DEDA's Executive, Developer agrees to repay all or a portion of the sums paid to Developer plus the Interest compounded semiannually. The amount to be repaid by Developer shall be determined by multiplying the sums paid to Developer by a fraction, the numerator of which is 12 minus the number of construction jobs created during the construction period and the denominator of which is 12.

D. Other Financial Assistance by Grantors

In 2008, DEDA granted to Old City Hall, LLC the amount of \$24,500 for the Old City Hall Building.

E. Continued Operations Commitment

Developer agrees to own and operate the Buildings, the Projects and the Properties, and to not assign, convey, transfer, sell or change its identity in violation of Article X for at least ten (10) years after the filing of the respective Certificates of Completion for the Projects as set forth in Paragraph E of Article V (the "Continued Operations Commitment").

F. Special Event of Default for Failure to Meet Continued Operations Commitment

In the event that Developer fails to meet the Continued Operations Commitment on either Building, and fails to cure such default within 30 days after receiving notice of default from the Executive Director, then Developer shall repay amounts reimbursed to Developer pursuant to Article IV, plus interest at a rate of 6% per annum, on a sliding ten-year scale, with 100% repayment for failure to meet the Continued Operations Covenant for either Building within 1 year of the filing of the respective Certificate of Completion, and with repayment for failure to meet the Continued Operations Covenant for said Building decreasing 10% on each anniversary date of the filing of the respective Certificate of Completion. Notwithstanding the above, DEDA may consider waiving such default in the event any proposed new owner or transferee shall have the

qualifications and financial capability, as determined by DEDA, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer. Any proposed new owner or transferee shall, by an instrument in writing satisfactory to DEDA and in a form recordable in the St. Louis County Recorder's Office and/or Registrar of Titles Office (as applicable), for itself and its successors and assigns, expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject.

ARTICLE XII

Operating Covenants

Developer covenants and agrees that during the term of this Agreement, in its operations and use of the Properties and the Projects it shall:

A. Maintenance

At all times cause the Buildings, the Projects and the Properties to be maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Buildings, Projects and Properties and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto.

B. Utilities

Pay or cause to be paid any and all charges for utilities furnished to the Buildings, the Properties and the Projects including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable TV, and electrical power.

C. Licenses and Permits

Preserve the existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Buildings, the Projects and the Properties and to be qualified to do business in the State of Minnesota.

D. Obey All Laws

Conduct its affairs and carry on its business and operations with respect to the Buildings, the Projects and the Properties in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Buildings, the Projects and the Properties; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Buildings, the Projects and the Properties.

E. Payment of Taxes

Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Buildings, the Projects or the Projects, subject to the right to contest in good faith in accordance with Minnesota law.

F. Assessment Fees and Charges

Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Buildings, the Projects or the Properties, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Buildings, the Projects or the Properties and all other charges lawfully made by any governmental body for public improvements.

G. Obligations and Claims

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Buildings, the Projects and the Properties as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.

H. Living Wage Covenant

Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance") and pay any employees in conformance therewith.

ARTICLE XIII

Indemnification

A. Generally

Developer shall to the fullest extent permitted by law, protect, indemnify and save DEDA and its officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims including claims for contribution or indemnity, demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Buildings, the Properties or the Projects, or growing out of or in connection with the use or non-use, condition or occupancy of the Buildings, the Properties or the Projects or any part thereof and also, without limitation, the construction of the Projects or any portion of the Buildings or the Properties. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by Developer of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Projects which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or

4. Any violation of any law, ordinance, court order or regulation affecting the Buildings, the Properties or the Projects, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save DEDA and its officers, agents, servants and employees and any person who controls DEDA within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims including claims for contribution or indemnity, demands and judgments arising out of any condition existing in the Buildings or on the Properties, whether pre-existing or after-created, which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Buildings or on the Properties, or the release or threatened release of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing on the Properties or in the Buildings.

C. Indemnification Procedures

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify DEDA under this Article, DEDA shall notify Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA with respect to which indemnity may be sought against Developer, DEDA shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Developer.

ARTICLE XIV

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer and DEDA against risk of loss or damage to the Buildings, the Properties and the Projects and any other property permanently located or exclusively used at the Project sites and against claims which may arise or result from the maintenance and use of the Buildings, the Properties and Projects, including operations conducted in connection with the construction of improvements on the Properties. Such coverages shall include but shall not necessarily be limited to the following:

A. Insurance During Construction

Developer, prior to entering on either Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance

Developer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the respective Property, Building and Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed

under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on said Project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the respective Building and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of Developer, DEDA, to the extent it has an insurable interest in the respective Property, any tenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and Developer shall waive all rights against DEDA for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance

Public Liability and Automobile Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$2,000,000 per occurrence for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors unless they are insured under the Contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors protective contingent liability;
- c. Personal injury;

- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions;
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement.

B. Permanent Insurance

Developer shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Developer's ownership of, occupancy of or use of the respective Building, Property or Project carried in the name of Developer, any tenant, and DEDA, as their respective interests may appear, as follows:

1. Property Insurance

Prior to expiration of the buildings' risk coverage specified above, the respective Building and Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$50,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer hereby waives any and all claims or causes of action against DEDA for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, Developer will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the respective Building and Property and insuring against loss thereof or damage thereto from the risks and

hazards of war, provided that the cost of such insurance is economically reasonable.

2. Liability Insurance

During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Developer shall procure and maintain continuously in force Public Liability and Automobile Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 and be for the same coverages. Insurance shall cover:

- a. Public liability, including premises and operations coverage;
- b. Independent contractors--protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned and hired vehicles;
- e. Contractual liability covering the indemnity obligations set forth herein;
- f. Products--completed operations.

3. Workers' Compensation

Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA.

C. Modification of Insurance Requirements

It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such

amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect. In the event that Developer believes said modifications to be unjustified under the standards set forth in this Paragraph, Developer shall promptly so notify DEDA and the parties hereto agree to meet as soon as practical thereafter and to negotiate in good faith the character and amounts of any said modifications meeting the standards hereinbefore set forth.

D. Requirements for All Insurance

All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in Minnesota. DEDA shall be named as an additional insured under the Public Liability and Automobile Liability Insurance required under Paragraphs A and B above. The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms: 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002), or equivalent as approved by DEDA's attorney. Developer shall also provide evidence of statutory Minnesota Workers' Compensation Insurance. DEDA does not represent or guarantee that the types of limits or coverages provided above are adequate to protect Developer's interests and liabilities.

E. Certificates

Certificates showing that the above- described insurance is carried in the specified amounts shall be furnished to DEDA prior to the execution of this Agreement, and a certificate showing continued maintenance of such insurance shall be on file with DEDA during the term of this Agreement. The form of each certificate of insurance shall contain an unconditional requirement that the insurer notify DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or

coverages evidenced by said certificate and shall further provide that failure to give such notice to DEDA will render any such change or changes in said policy or coverages ineffective as against DEDA.

F. Reconstruction Obligation and Uninsured Loss

In the event the Properties, the Buildings, and/or the Projects or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.

ARTICLE XV

Developer Defaults and Remedies Therefor

A. General Defaults and Remedies

1. General Events of Default

In addition to the Special Events of Default set forth in Article XI, the following shall be deemed to be general events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Paragraph A(2) below shall be applicable.

- a. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Developer pursuant to this Agreement and such failure shall continue for a period of 30 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written

notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.

- b. Developer shall permit valid liens, not cured or contested within 30 days, to be placed on the Buildings or the Properties, or Developer loses title to the Buildings or the Properties or both.
- c. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.
- d. Developer fails to meet the April 1, 2012, deadline set forth in Article VII for (i) application of federal and state historic tax credits with SHPO, and (ii) approval from the National Park

Service of Part 3 of the application for historic tax credits and, therefore, approval of the Old City Hall Building as a “certified rehabilitation” of a “certified historic structure”;

- e. Developer fails to place at least \$350,000 into an escrow account as required by Article VII.
- f. Monies in the escrow account held by Arrowhead Abstract are not used solely for the Lange Motor Building Project as set forth in Article VII.
- g. Developer fails to repay the sums set forth in Paragraphs C and G of Article XI upon the occasion of a Special Event of Default.

2. General Remedies

DEDA shall have the following remedies in the event of a default:

- a. Cease any payment due from DEDA and withhold the performance of any obligation owed by DEDA under this Agreement.
- b. Terminate this Agreement.
- c. Seek and be entitled to repayment from the Developer of all sums paid by DEDA which repayment obligation shall, from the date of default, bear interest at the rate of 8.5% per annum.
- d. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or compel Developer’s performance of its obligations hereunder.
- e. Enforce or foreclose on the Mortgage Lien described herein.
- f. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

B. Non-Waiver

The waiver by DEDA of any default on the part of Developer or the failure of DEDA to declare default on the part of Developer of any of its

obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Developer of the same or of any other obligation of Developer hereunder. To be effective, any waiver of any default by Developer hereunder shall be in writing by DEDA.

C. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

D. Attorneys' Fees

In the event that Developer is in default of any of the terms and conditions of this Agreement and DEDA shall successfully take legal action to enforce said rights herein, in addition to the foregoing, DEDA shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XVI

Representations by DEDA

DEDA represents and warrants that as of the date hereof:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are no actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA has investigated and has no knowledge that a DEDA Director or other member, official, or employee of DEDA is directly or indirectly

financially interested in this Agreement or in any transactions concluded in connection with this Agreement.

- D. DEDA shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

ARTICLE XVII

Developer's Representations and Warranties

Developer represents and warrants for itself only that as of the date hereof:

- A. That Developer is a lawfully constituted limited liability company under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. That Developer is fully competent to acquire the Buildings and the Properties and to construct the Projects thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, at its own expense.
- C. That Developer has applied or is in the process of applying to SHPO for federal and state historic tax credits on the Old City Hall Project.
- D. That there are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer, would have a material adverse affect upon Developer or the Buildings, Properties and /or Projects, and that Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Buildings, the Properties and/or the Projects.

- E. That Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- F. That Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects.
- G. That if necessary, Developer agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.
- H. Without the tax increment assistance to be provided pursuant to this Agreement, the available resources would be inadequate and not economically feasible to commence the historic renovation of the Old City Hall Project and that therefore, but for the tax increment assistance to be provided for hereunder, the Old City Hall Project would not have been commenced before July 1, 2011.

ARTICLE XVIII

Runs with the Land

This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE XVIII

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of DEDA:

Duluth Economic Development Authority
Attn: Executive Director
402 City Hall
411 West First Street
Duluth, MN 55802

In the case of Developer:

Old City Hall, LLC
Attn: Jerry Peterson
132 East Superior Street
Duluth, MN 55802

ARTICLE XIX

Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota, and the parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

ARTICLE XX

Authorization to Execute Agreement

Developer represents to DEDA that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Developer who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.

ARTICLE XXI

Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Developer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

ARTICLE XXII

No Third Party Rights

This Agreement is to be construed and understood solely as an agreement between the parties and shall not be deemed to create any rights in any other person or entity. No person or entity shall have the right to make claim that he, she or it is a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties, may be waived at any time by mutual agreement between the parties.

ARTICLE XXIII

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

OLD CITY HALL, LLC

By _____
Its President

By _____
Its President

By _____
Its Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by John Heino and Tony Cuneo, the President and Secretary, respectively, of the Duluth Economic Development Authority of Duluth, an economic development authority created and existing under Minnesota Statutes, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Timothy Nelson, the President, of Old City Hall, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

This instrument was drafted by:
Joan M. Christensen
Attorney for DEDA
410 City Hall
Duluth, MN 55802
(218) 730-5490

ESCROW AND DISBURSEMENT AGREEMENT

THIS ESCROW AGREEMENT, dated as of _____, 2011 (the "Agreement") is by and among the DULUTH ECONOMIC DEVELOPMENT AUTHORITY ("DEDA"), OLD CITY HALL, LLC ("Developer"), and ARROWHEAD ABSTRACT & TITLE COMPANY ("Arrowhead").

RECITALS:

- A. DEDA and Developer have entered into a Building in Duluth 2011 Conditional Grant Agreement dated _____, 2011, (the "Development Agreement") which is hereby incorporated by reference. The capitalized terms in this Agreement shall have the same meaning as those defined in the Development Agreement.
- B. Under the terms of the Development Agreement, DEDA agrees to provide financial assistance in an amount up to \$350,000 to Developer for the historic renovation of the Old City Hall Building. It is anticipated that Developer will secure historic tax credits for the Old City Hall Building Project.
- C. The Development Agreement also provides for Developer to cause an amount of at least \$350,000 to be deposited into an escrow account with Arrowhead.
- D. The escrowed funds are to be used solely for the Lange Motor Building Project.
- E. The Lange Motor Building Project is to commence on or before December 31, 2012 and be completed on or before December 31, 2013.
- F. Developer and DEDA desire that Arrowhead serve as the disbursing agent for the escrowed funds.
- G. Arrowhead is willing and able to undertake the disbursement of such funds for the Lange Motor Building Project on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and conditions herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1.1 As required by the Development Agreement, Developer shall cause at least \$350,000 to be deposited into an escrow account set up by Arrowhead.

- 1.2 All such funds received from Developer shall be deposited in an interest bearing account in a bank of Arrowhead's choosing. The funds in the escrow account shall be accounted for separately, and the interest thereon shall be used for the Lange Motor Building Project.
- 1.3 The escrowed funds may be drawn upon by Developer solely for the purpose of the Lange Motor Building Project. No part of the escrowed funds may be used directly or indirectly for payment of any costs other than for the Lange Motor Building Project.
- 2.1 Prior to the disbursement of any funds under this Agreement, Developer shall furnish to DEDA's Executive Director documentation satisfactory to DEDA that the requirements contained in Articles III, IV and XIV of the Development Agreement have been met.
- 2.2 No funds shall be disbursed to Developer from the escrow account if there is, in DEDA's sole discretion, a Special or General Event of Default under the Development Agreement. In the event that a Special or General Event of Default is not cured pursuant to the terms of the Development Agreement, then at DEDA's request, Arrowhead shall pay to DEDA out of the escrow account the amount required to remedy said default.
- 3.1 Arrowhead shall disburse the funds upon receipt of draw requests from Developer which are approved by Arrowhead and DEDA, setting forth the following:
 - (a) The amount of funds to be disbursed.
 - (b) The address to which such funds are to be forwarded.
 - (c) A description of the purpose of the payment.
 - (d) A statement as to whether the draw request is a request for final disbursement.
- 3.2 Each draw request shall contain the following as attachments in form and substance satisfactory to Arrowhead and DEDA:
 - (a) Bills, receipts, invoices or other documents acceptable to Arrowhead and DEDA evidencing the amount and purposes for which the disbursement is requested;
 - (b) Mechanics and material lien waivers; and
 - (c) Certification of Developer and Developer's general contractor, if any, to the effect that the funds requested to be disbursed were

properly incurred for work actually completed and materials actually delivered to the site and incorporated into the Lange Motor Building Project.

- 3.3 Developer agrees to submit to Arrowhead and DEDA such additional materials as Arrowhead or DEDA may reasonably request to evidence the proper expenditure of the funds for the Lange Motor Building Project. Neither Arrowhead nor DEDA has any duty to ascertain the correctness of any documents submitted in connection with any request to disburse funds.
- 3.4 Prior to the initial disbursement, Developer shall furnish or cause to be furnished to Arrowhead and DEDA:
 - (a) A sworn construction statement in form reasonably satisfactory to DEDA and Arrowhead executed by Developer and its general contractor, if any, disclosing the sources and uses of funds to pay the total cost for the Lange Motor Building Project, and setting forth the names and addresses of all contractors and subcontractors, including material suppliers, with whom Developer or its general contractor, if any, has contracts prior to the date of such sworn construction statement; a description of the work and materials to be furnished by such contractors, subcontractors and suppliers; the amounts of any construction contracts, and amounts, if any, paid to date thereon; and, if any, the balances due thereon.
 - (b) All building and/or development permits required to complete the Lange Motor Building Project according to the plans approved pursuant to Article IV of the Development Agreement.
 - (c) A draw request from Developer, meeting the requirements of Sections 3.1 and 3.2.
 - (d) A certificate by an inspector selected by DEDA to the effect that the work has been completed and materials are in place as indicated in the draw request. It shall in all instances be Developer's responsibility to make sure that the inspector is given appropriate access from time to time to provide the required certification. Inspections will be at Developer's expense. In lieu of an inspector's certificate, DEDA may, in its sole discretion, accept a sworn statement of Developer's architect to the effect that the work has been completed and materials are in place as indicated in the draw request.

- (e) Proof in a form satisfactory to DEDA and Arrowhead that the Lange Motor Building Project is being renovated in accordance with the Standards for Rehabilitation.
 - (f) Statements, partial or final lien waivers, affidavits, supporting waivers, and releases of liens, in form and content satisfactory to DEDA and Arrowhead.
- 3.5 Prior to each disbursement, except the initial disbursement, Developer shall cause to be delivered to DEDA and Arrowhead a draw request complying with Sections 3.1 and 3.2 and:
- (a) An updated sworn construction statement of Developer and its general contractor containing the information called for in Section 3.4 (a) revised as of the date of the draw request and setting forth:
 - (i) The names and addresses of all additional contractors, subcontractors and material suppliers with whom contracts have been made and the additional information with respect to such contractors, subcontractors and material suppliers called for in Section 3.4(a).;
 - (ii) All change orders;
 - (iii) The amount due on all construction contracts.
 - (b) Statements, partial or final lien waivers, affidavits, supporting waivers, and releases of liens in form and content satisfactory to DEDA and Arrowhead.
 - (c) A certificate by the inspector to the effect that the work has been completed and materials are in place as indicated in the draw request. It shall in all instances be Developer's responsibility to make sure that the inspector is given appropriate access from time to time to provide the required certification. Inspections will be at Developer's expense. In lieu of an inspector's certificate, DEDA may, in its sole discretion, accept a sworn statement of Developer's architect to the effect that the work has been completed and materials are in place as indicated in the draw request.
 - (d) Proof in a form satisfactory to DEDA and Arrowhead that the Motor Lange Building Project is being renovated in accordance with the Standards for Rehabilitation.

- (e) Statements, partial or final lien waivers, affidavits, supporting waivers, and releases of liens, in form and content satisfactory to DEDA and Arrowhead.
- 3.6 Not later than five business days following receipt of the documents delivered pursuant to this Section 3, Arrowhead will orally notify Developer and DEDA whether it has received all such required documents.
- 3.7 Upon receipt of the notice from Arrowhead, and upon written approval of the draw request by DEDA, Arrowhead shall disburse funds in the amount of the draw request within three full business days of its receipt of approval by DEDA.
- 3.8 Prior to each disbursement hereunder, Arrowhead shall review the current sworn construction statement and if it appears from such review that there are insufficient funds to pay for those portions of the Lange Motor Building Project yet to be completed, Arrowhead shall inform Developer and DEDA. It is understood that Arrowhead is not liable for facts not disclosed to Arrowhead such as cost overruns and change orders.
- 3.9 Draw requests may be made only once each calendar month.
- 4.1 Disbursements by Arrowhead will be to Developer, its general contractor, if any, or directly to contractors or material suppliers as Arrowhead elects.
- 4.2 Each disbursement to a contractor shall be considered as a separate disbursement and no payment to a contractor shall obligate Arrowhead to make disbursements to any other contractor. This Agreement is not made for the benefit and may not be enforced by any contractor.
- 4.3 Arrowhead shall at all times keep and maintain true and accurate books and records in sufficient detail to reflect the disbursements made by Arrowhead. Upon completion of the Lange Motor Building Project, Arrowhead shall provide a summary of the disbursements for the Lange Motor Building Project. Developer and DEDA may at any reasonable time and from time to time examine all relevant books and records of Arrowhead pertaining to the disbursements made to or by Arrowhead and may make extracts therefrom and copies thereof. Arrowhead shall provide Developer and DEDA with copies of the disbursement information on each draw request for the Lange Motor Building Project.
- 4.4 Draw request certifications and other instruments provided for in this Agreement may be accepted by DEDA and Arrowhead as conclusive evidence of the facts and conclusions stated therein.

- 4.5 Arrowhead and DEDA do not ensure that the Lange Motor Building Project will be complete, or that when completed, that the Lange Motor Building Project will be in accordance with the plans approved pursuant to Article IV of the Development Agreement, or that sufficient funds will be available for completion, or that the certifications of the inspector or the architect will be accurate. Inspections and approvals of the inspector or the architect in connection with the construction of the Lange Motor Building Project impose no responsibility or liability of any nature whatsoever on DEDA or Arrowhead. Developer shall not rely upon DEDA or Arrowhead or upon the fact that DEDA or Arrowhead have approved or made a disbursement for assurance that any improvement has been made or that any materials or workmanship meets any standard or specifications of any kind whatsoever. The sole obligation of DEDA and Arrowhead under this Agreement is to make the disbursements if and to the extent required by this Agreement. No liability is assumed by DEDA to Developer for protection against any mechanic's liens.
- 4.6 The function and duties of Arrowhead include only those set forth in this Agreement, and Arrowhead is not entitled to act and shall not act except in accordance with the terms and conditions of this Agreement.
- 5.1 It is agreed between the parties that to the extent that any provision in the Development Agreement conflicts in any way with the terms and conditions of this Agreement, the terms and conditions of the Development Agreement shall in each case supersede, and the Development Agreement shall be deemed to be controlling over this Agreement.
- 5.2 This Agreement shall terminate when all disbursements required to be made with respect to the Lange Motor Building Project by Arrowhead under the provisions hereof shall have been made. It may be extended by the written mutual consent of all parties hereto.
- 5.3 Developer agrees to pay all of the reasonable costs and expenses of Arrowhead in connection with the implementation of this Agreement.
- 5.4 This Agreement may not be amended, changed, modified or altered without the written agreement of all parties hereto.
- 5.5 This Agreement shall be subject to and governed by the laws of the State of Minnesota. All actions to enforce the terms and provisions of this Agreement shall be brought within the State of Minnesota, and the parties hereby consent to the exclusive jurisdiction of the State Courts, sited in St. Louis County, Minnesota.

5.6 The parties agree that this Agreement may be executed in one or more counterparts and that the counterparts taken together will form one original. The parties also agree that this Agreement and signed copies of this Agreement may be transmitted electronically (e.g. facsimile or email) and that electronically transmitted copies of this Agreement and electronically transmitted signatures shall be deemed originals for all purposes.

IN WITNESS WHEREOF, DEDA, Developer and Arrowhead have caused this Agreement to be duly executed as of the date first above set forth.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

OLD CITY HALL, LLC

By _____
Its Executive Director

By _____
Its President

ARROWHEAD ABSTRACT & TITLE

By _____
Its President

This instrument was drafted by:
Joan M. Christensen
Attorney for DEDA
410 City Hall
Duluth, MN 55802
(218) 730-5490

Jeff Cox - Fwd: Completed OCH-DBCTC Labor Agreement

From: Brian Hanson
To: Council
Date: 5/3/2011 6:29 PM
Subject: Fwd: Completed OCH-DBCTC Labor Agreement
Attachments: OCH DBCTC MOA 5 3 11.pdf

President Gardner and Councilors:

As you are probably aware, there was a passionate discussion at the Wednesday, April 27, DEDA meeting about labor issues related to the BID 2011 project for the Historic Renovation of Old City Hall. DEDA Commissioners were concerned about the issues discussed, but supported the project moving forward. Commissioners also supported the clearly stated intention of the parties involved to get together and resolve their differences. On Monday, May 9, you will be asked to consider approving this project under Council Resolution 11-0232.

Today I am pleased to be able to share the attached Memorandum of Agreement between Old City Hall and the Duluth Building and Construction Trades Council. The parties came together and found a workable solution that will allow this worthy project to move forward. I want to thank both Craig Olson and Jerry Peterson for their efforts. I would also like to thank Commissioners / Councilors Jeff Anderson, Todd Fedora and Tony Cuneo for their help and support for the parties involved in this agreement.

I look forward to future discussions related to DEDA and City development policies. It is vital that our policies support the needs of our customers including citizens, business / developers and the trades. It is also vital that these policies be meaningful, clearly communicated and consistently applied.

Thanks. Brian

Brian W Hanson
 Business & Community Development Director - City of Duluth
 Room 402 City Hall
 411 W First St
 Duluth, MN 55802

218.730.5322

Notice: This email contains confidential, legally privileged information which belongs to the sender and is intended for the individual named above. If you are not the intended recipient, any disclosure, copying, distribution or any other use of this email is strictly prohibited. Please advise sender immediately if you have received this email in error. Thank you.

>>> "Jerry Peterson" <jerrypetersonnorstar@gmail.com> 5/3/2011 3:42 PM >>>
 Brian,

Thank you and everyone in your office for helping get this completed.

Craig and I have reached total agreement and have established a solid working relationship for making this project a total success. Please pass a copy of this signed document to everyone at DEDA as well as the City Councilors. Both Craig and myself are pleased to be able to report our successful agreement to everyone who had told us to "work this out".

We all know issues and situations may pop up in the course of this project, however, we are confident that we have established a good honest relationship between us and will be able to handle whatever may arise.

Sincerely,

Jerry Peterson, CFO

OCH/JTA
218.820.8658

Memorandum of Agreement

Between

Old City Hall, LLC

And

Duluth Building and Construction Trades Council

BACKGROUND

Tim Nelson and Rod Raymond are the principals of Old City Hall, LLC (OCH). In August 2010 (revised in January 2011) OCH contracted with Kuepers, Inc., an award winning Design Build Construction Management Company, to remodel and restore their property known as The Historic Duluth Old City Hall located at 132 East Superior Street. The original project is primarily an interior remodeling of the building to accommodate a restaurant/pub. The project's private financing could only provide for essential commercial viability and unfortunately only included minimal and essential historic preservation elements. On 2/14/2011, OCH closed on its financing agreements for this project, combining owner's equity and loans from Beacon Bank and the Small Business Administration. The financing and construction contract are inter-dependent and binding for all parties. The financing has been in place for over two months providing resources for the primary restaurant project to be in process and underway.

In December, 2010, OCH applied for a "BID 2011" DEDA grant. If obtained, it would allow OCH to add significant and sufficient Historic Restoration elements to the Historic Duluth City Hall making entire project eligible for Historic Tax Credits. The tax credit benefits will allow OCH to clean-up and provide a first phase restoration of another property owned by OCH, known as the Lange Motor or Carlson Bookstore also located in The Old Downtown District. In March 2011, DEDA Staff provided a preview of projects that were a good match with BID 2011 and for which Development Agreements would be pursued. On 4/21/2011, DEDA Staff did complete a comprehensive Project Development Agreement with OCH to be considered at the next DEDA meeting scheduled for 4/27.

In the week of April 18, 2011, OCH was contacted by various parties questioning their choice of the general contractor, already performing under contract, as-well-as questioning the level of union workers that would be engaged on the project. OCH having already started the independently financed, interior/restaurant phase of the project was not informed until April 27th, day of the DEDA meeting, that the pending DEDA BID 2011 grant for the proposed second phase (exterior refurbishment) of the project would now bring into question Phase I "in place" contracts. The DEDA Project Development Agreement does not address or mention that OCH would be required to publically state compliance with The Bacon-Davis Act or the need to enter into a Project Labor Agreement. OCH is not a professional "Developer," it is simply a building ownership LLC, attempting to improve their property in order to create jobs in a blighted district and they were not aware of the Davis Bacon Act or how it would affect this project.

The construction contract OCH has executed with Kuepers, Inc. for the first phase of the project, had already provided for over 70% of the project to be awarded to union subcontractors and the remaining work would have been completed by local owner/operator businesses (friends of OCH owners) as well as two direct employees of OCH. The second phase (to be funded by the DEDA grant) was always anticipated to be entirely local union contractors. After hearing about The Davis Bacon Act, OCH felt confident that its' construction arrangements would surely meet the requirements of Davis Bacon, at least in spirit. Now that OCH has had the opportunity to read and consider exactly what the act requires, OCH and Kuepers Inc. are very willing to abide by The Davis Bacon Act.

CURRENT

At the recent 4/27 DEDA meeting, The Duluth Building and Construction Trades Council (DBCTC) raised significant and as we understand in retrospect, reasonable questions and objections to the OCH project and process. Although DEDA approved the OCH grant; DEDA members encouraged OCH and DBCTC to find a solution and establish a way to work together on this project. OCH would be devastated by creating conflict, albeit unintentional, with the local DBCTC or any other segment of our Duluth community. We are in the business of creating jobs and fun enjoyable experiences for the citizens of Duluth and the many visitors our community attracts each year.

FORWARD

OCH and DBCTC have met and believe we have defined a workable way to enthusiastically proceed to get this project completed as planned with total support for and from the construction trades as well as retaining the appetite of OCH owners to risk their entire organization on bringing new life to Historic Old Downtown.

RESOLUTION

Solution and Binding Agreement

Tim Nelson and Rod Raymond as owners of OCH, LLC and Kuepers, Inc the general contractor for OCH, will:

1. **Abide by The Davis-Bacon Act** in accordance with the prevailing wage standards requiring that all contractors or subcontractors performing on this project pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits as listed with the Minnesota Department of Labor and Industry.
2. **Make the following immediate changes** on distribution of subcontract work:
 1. Pledged distribution of subcontract work
 - Mechanical, Plumbing, Heating, Sheet-metal (Carlson)
 - Electrical (Union TBD)
 - Sprinkler System (Viking Sprinkler)
 - Ceiling Tile (Twin City Acoustics)
 - Elevator (Schindler Elevator)
 - Drywall and Painter – (Union)
 - General construction/basic trades – (Union)
 2. Additional union subcontractors: Kuepers, Inc. will immediately provide bid packages for Drywall, Painter, and Carpenter work initially promised to several local owner/operator contractors with the following understandings:
 - The in-place construction contract budget was established using prevailing wage estimates and in-place financing will not cover over-runs
 - Bids must be competitive and come in within the contract/financing budget
 - OCH and Kuepers in cooperation with DBCTC will, in good faith, create solutions for over-runs that could occur if the new replacement, union contractor's approach and methods differ from and are not otherwise able to achieve established budget targets
 - If bids will not permit the project to stay within contracted/financing budget and the project is in jeopardy of defaulting with banks; OCH/Kuepers and DBCTC pledge to resolve and share in finding a financial solution while abiding by The Davis-Bacon Act

- Limited use of Non-union specialized craftsmen
 - Simon Gray & Rob Strom are OCH employees and will do art-work/finishing, decorating, clean-up, and misc. labor in conjunction with and proceeding from already established work duties
 - Total Construction will provide artisan restoration work
 - Bar assembly/completion will be provided by Better World Builders, friends of owners
3. **Phase II Work Distribution** (DEDA funded portion of total project, pending City approval)
- Trades expected to be contracted
 - Roof (TBD, Union)
 - Cornice, Duluth Sheet Metal (Union)
 - Brick and Masonry (Stretar, Union)
 - Window-Glass (Mesabi Glass, Union)
 - Mechanical, (Carlson, Union)
 - All currently listed contractor's have provided bids and were the basis for project budget
 - Limited specialized craftsmen will be used for items beyond the DEDA grant funds
 - Artisan door restoration (Total Construction)
 - Misc. labor and clean-up by OCH employees

4. Benefits to OCH

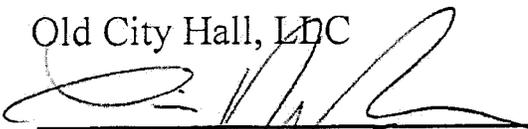
1. DBCTC agrees to support the OCH project with every good faith effort to promote safe cooperative interaction with all parties participating in the construction of the project
2. DBCTC will pledge to insure that as long as this memorandum of agreement is followed in spirit and fact; no job action activities will be directed at the OCH project or the businesses that will operate in the OCH building after construction is completed
3. OCH, Kuepers and DBCTC pledge to notify each other immediately if any misunderstandings or changes in the process threaten the cooperative and productive completion of this project.

5. Agreed to:

May 3, 2011

By:

Old City Hall, LLC



 Tim Nelson, Partner



 Rod Raymond, Partner

Duluth Building and Construction Trades Council



 Craig Olson, President

Relating to Resolution 11-0232R

Statement of Sources & Uses
Old City Hall / Lange Motors

	Old City Hall		Lange Motors
Sources:			
Beacon Bank *	\$ 1,220,000		\$ -
SBA Loan*	1,010,000		
Owner Equity - R/E	300,000		
Owner Equity - Cash	38,000		\$ 340,000
BID 2011 Grant	<u>350,000</u>	**	<u>350,000</u>
 Total Sources	 <u>\$2,918,000</u>		 <u>\$690,000</u>
 Uses:			
Professional Fees	\$ 37,000	#	\$ -
Historic Renovation	388,000	#	690,000
Construction	1,419,000	#	-
Equipment	190,000		
Debt Refinance	564,000		
Owner Equity - R/E	300,000		
Contingency	<u>20,000</u>	#	<u>-</u>
 Total Uses	 <u>\$2,918,000</u>		 <u>\$690,000</u>
 # Construction	 <u>\$1,864,000</u>		

* Per the Conditional Grant Agreement, the Company is permitted to secure the mortgages listed. The DEDA mortgage would be subordinate to these mortgages.

** This reflects the BID dollars going to the Lange Project in the form of tax credits. It is not a second BID grant.