

INTERGOVERNMENTAL RELATIONS COMMITTEE

11-0511R

RESOLUTION AUTHORIZING A LEASE AGREEMENT WITH THE STATE
OF MINNESOTA, DEPARTMENT OF ADMINISTRATION FOR OFFICE
SPACE WITHIN CITY HALL

CITY PROPOSAL:

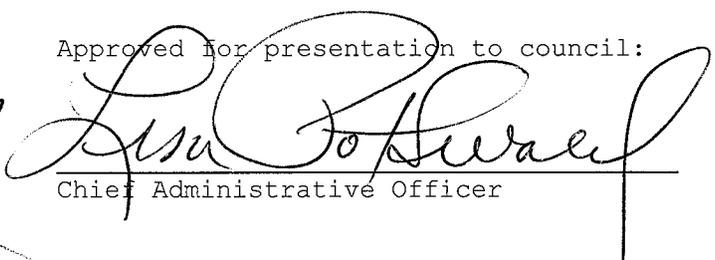
Resolved, that the proper city officials are hereby authorized to enter into an agreement with the state of Minnesota, substantially in the form of that on file in the office of the city clerk as public document no. ____ for the lease of space in City Hall for a four year period from October 1, 2011 through September 30, 2015 in the total amount of \$58,677.72 to be deposited in Fund 110-121-1217-2120-4622 (General, Public Administration, Maintenance Operations, Architecture and Facilities Maintenance, Rent of Buildings)

Approved:



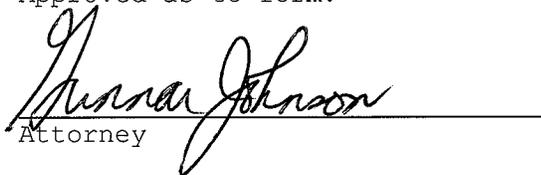
Department Director

Approved for presentation to council:



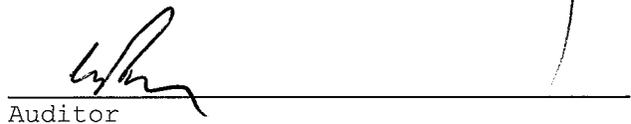
Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ADM LP:slw 9/27/2011

STATEMENT OF PURPOSE: This resolution authorizes a four year lease agreement with the state of Minnesota for office space in City Hall for the office of the state auditor, funds payable to the general fund. The office of the state auditor currently occupies space within City Hall under a 1993 lease which has been amended six times. The state of Minnesota wants to continue leasing the existing space under a new lease agreement.

STATE OF MINNESOTA

LEASE

LEASE NO. **11877**

THIS LEASE is made by and between City of Duluth, hereinafter referred to as LESSOR, and the State of Minnesota, Department of Administration, hereinafter referred to as LESSEE, acting for the benefit of the Office of the State Auditor.

WHEREAS, the Commissioner of Administration is empowered by Minn. Stat. §16B.24, subd. 6, to lease non-state owned property;

NOW, THEREFORE, LESSOR and LESSEE, in consideration of the rents, covenants and considerations hereinafter specified, do hereby agree each with the other as follows.

1. **LEASED PREMISES** LESSOR grants and LESSEE accepts the lease of the following described Leased Premises located in the City of Duluth, County of St. Louis, Minnesota 55802:

approximately eight hundred ninety (890) usable square feet of space, as shown on the floor plans attached hereto as Exhibit A in the building known as Duluth City Hall ("Building") located at 411 West 1st Street.

2. **USE** LESSEE shall use and occupy the Leased Premises only as office and related activities.
3. **LEASE TERM** The term of this Lease is four (4) years, commencing October 1, 2011 and continuing through September 30, 2015 ("Lease Term").

4. **USABLE SPACE MEASUREMENTS**

- 4.1 **Definition** The Leased Premises is defined as the total usable square feet exclusively occupied by LESSEE and is the basis for calculation of rent payable hereunder.
- 4.2 **Measurement Method** Usable square feet is calculated by measurement from the inside finished surface of exterior walls to the inside finished surface of Building corridor and other permanent walls or to the center of walls demising the Leased Premises from adjacent tenant space. Measurement is taken from the exterior wall glass line only if more than fifty percent (50%) of the wall is glass.

4.3 Exclusions and Deductions Vertical shafts, elevators, stairwells, dock areas, mechanical, utility and janitor rooms are excluded from usable square feet. Also excluded from usable square feet are restrooms, corridors, lobbies and receiving areas accessible to the public or used in common with other tenants. Each and every column, pilaster or other projection into the Leased Premises of four (4) square feet or more is deducted.

5. **RENT**

5.1 In consideration for all covenants, representations and conditions of the Lease, LESSEE agrees to pay LESSOR rent for the Lease Term in the sum of fifty-eight thousand six hundred seventy-seven and 72/100 dollars (\$58,677.72) in accordance with the rent schedule set forth below:

LEASE PERIOD	SQUARE FEET	RATE PER SQ. FT.	MONTHLY PAYMENT	RENT FOR LEASE PERIOD
10/01/11 - 09/30/12	890	\$16.00	\$1,186.67	\$14,240.04
10/01/12 - 09/30/13	890	\$16.32	\$1,210.40	\$14,524.80
10/01/13 - 09/30/14	890	\$16.64	\$1,234.13	\$14,809.56
10/01/14 - 09/30/15	890	\$16.97	\$1,258.61	\$15,103.32
			TOTAL	\$58,677.72

5.2 Rent Billing Address LESSOR shall mail or personally deliver original bills and rent statements to LESSEE at the following address:

Office of State Auditor
Accounts Payable
525 Park St, Ste. 500
St Paul MN 55103

5.3 Rent Payment Address LESSEE shall mail or deliver the monthly rent set forth above at the end of the applicable calendar month to LESSOR at the following address:

City of Duluth
Attn: Finance Department
411 West 1st St
Duluth MN 55802

5.4 LESSOR represents and warrants that it is solely entitled to all rents payable under the terms of this Lease.

6. **TERMINATION**

6.1 **Funding** In the event that the Minnesota State Legislature does not appropriate to the Office of the State Auditor funds necessary for the continuation of this Lease, or in the event that Federal Funds necessary for the continuation of this Lease are withheld for any reason, this Lease may be terminated by LESSEE upon giving thirty (30) days prior written notice to LESSOR.

6.2 **Statute** Pursuant to Minn. Stat. §16B.24, subd. 6, this Lease is subject to cancellation upon thirty (30) days prior written notice by LESSEE to LESSOR, for any reason except lease of other non-state-owned land or premises for the same use.

6.3 **Any Reason**

a. Notwithstanding Clauses 6.1 and 6.2 above, this Lease may be terminated by LESSOR or LESSEE for any reason at any time upon providing one hundred twenty (120) days prior written notice to LESSOR.

b. **Relocation to Alternate Space**

(i) Should the reason for LESSOR'S termination be based solely upon LESSOR'S need to take control of the Leased Premises for LESSOR'S purposes, LESSOR may relocate LESSEE to alternate space ("ALTERNATE SPACE") within or outside Duluth City Hall. Said Alternate Space is subject to LESSEE'S approval, which shall not be unreasonably withheld.

(ii) In the event LESSOR relocates LESSEE to Alternate Space, LESSOR agrees to pay all actual costs incurred by LESSEE in relocating LESSEE to alternative space, including but not limited to physical move costs, furniture install plans, dismantling and re-installation of furniture, printing costs for letterhead, envelopes, business cards and other essential forms in an amount not to exceed existing inventory at the time of relocation and voice and data cabling. Such reimbursement of costs shall be subject to such reasonable substantiation and documentation requirements as LESSOR may reasonably request.

7. **SURRENDER OF LEASED PREMISES** LESSOR and LESSEE hereby agree that at the expiration or earlier termination of this Lease or extension thereof:

7.1 **Personal Property** Any equipment and furniture, including, but not limited to, modular workstations, shelving units, projection screens, audio-video equipment and/or any program equipment (hereinafter referred to as "Personal Property"), whether attached to the Leased Premises by LESSOR or by LESSEE, shall remain the property of LESSEE. LESSEE shall remove its Personal Property, vacate and surrender possession of the

Leased Premises to LESSOR in as good condition as when LESSEE took possession, ordinary wear, tear and damage by the elements excepted.

- 7.2 Alterations, Additions and Improvements All alterations, additions or improvements made to or installed upon the Leased Premises, whether paid for by LESSOR or LESSEE, including, but not limited to: walls, movable partitions, floor and wall coverings, supplemental heating, cooling and/or ventilation equipment, fire protection, voice and data cabling and security systems, which in any manner are attached to the Leased Premises, shall remain the property of LESSOR, and shall be surrendered with the Leased Premises as a part thereof with no further responsibility or obligation for removal by LESSEE, unless LESSOR has granted prior approval upon LESSEE'S request to remove such alterations, additions or improvements.

8. **COMPLETION OF DEFERRED MAINTENANCE** LESSOR shall provide, at its cost, labor and materials to replace or repair four (4) light fixtures within the Lease Premises through the replacement of light bulbs or ballasts, whichever is necessary by, October 31, 2011.

9. **TELECOMMUNICATIONS**

- 9.1 Building Access The entrance size must be large enough to provide access for the telephone company's facilities as necessary to accommodate the LESSEE'S needs. If the entrance size does not meet access requirements by the Telephone Company, the State of Minnesota or other telecom providers, LESSOR shall, at its expense, make such changes necessary to ensure that building access requirements are met.

9.2 Minimum Point of Presence (MPOP)/Intermediate Distribution Frame (IDF)

- a. LESSOR shall establish and identify the location of the MPOP for service provided by the telephone company.
- b. LESSOR shall provide all required cable from the MPOP to the telecommunications panel (IDF) on the floor of which the Leased Premises are a part for present and future requirements (2 pair from the MPOP to the IDF for each work station).
- c. LESSOR shall provide LESSEE access to the Building-grounding electrode.
- d. LESSOR shall remove all cable/wiring that does not meet applicable building code.

- 9.3 Station Wiring/Cable Access LESSOR shall provide and install, at its expense, a horizontal subsystem that will provide a cable route from the IDF (telecommunication panel/closet/room) to each station on the floor. The subsystem could be made up of any one or parts of the following:

- a. Under floor duct system (e.g., walker duct system).

- b. Conduit.
- c. Suspended ceilings.
- d. Raised flooring.

9.4 All voice and data cabling installed by LESSEE or by LESSOR on behalf of LESSEE shall remain a part of the Leased Premises upon expiration or termination of this Lease, unless LESSEE elects to remove said cabling.

10. **LESSEE'S ALTERATIONS**

10.1 In the event LESSEE desires to remodel, make alterations, additions and/or changes (hereinafter, "Alterations") to the Leased Premises, and it is determined that such Alterations are at LESSEE'S expense, LESSEE shall not make such Alterations without the advance written consent of LESSOR, which LESSOR shall not unreasonably withhold. Alterations shall be approved by and arranged through LESSOR as follows:

- a. Upon LESSEE'S request, LESSOR shall provide LESSEE up to three (3) written cost estimates from LESSOR'S vendors for desired Alterations. LESSOR or LESSOR'S agent/management company shall not include supervision fees as a part of the cost of Alterations.
- b. Alterations shall be documented and authorized in advance according to the applicable cost level, as follows:
 - (i) Alterations totaling \$1,000.00 or less shall be set forth in and authorized by LESSEE in LESSEE'S signed Purchase Order which shall be submitted to LESSOR.
 - (ii) Alterations totaling \$1,000.01 through \$5,000.00 shall be set forth in and authorized by LESSEE in a signed Remodeling Request Memo, which shall be submitted to LESSOR.
 - (iii) Alterations of \$5,000.01 or more shall be set forth and authorized by LESSOR and LESSEE by way of an executed Amendment to the Lease.

10.2 Upon completion of said Alterations, LESSOR shall pay the appropriate vendor(s), and LESSEE shall reimburse LESSOR within thirty (30) days following receipt of a detailed invoice from LESSOR.

11. **DUTIES OF LESSOR** LESSOR shall, at its expense, provide the following:

11.1 **Management**

- a. LESSOR agrees that in exercising its management responsibilities of the property of which the Leased Premises is a part, including the maintenance, repair, alterations and construction relating thereto, it shall comply with all applicable laws, statutes, rules, ordinances and regulations, including, but not limited to: building code, fire code, disabilities access, zoning, air quality, pollution control, recyclable materials and prevailing wage requirements, as issued by any federal, state or local political subdivisions having jurisdiction and authority in connection with said property.
- b. LESSOR shall use its best efforts to employ practices that protect occupants' health and ensure conservation of natural resources, including recycling of recyclable materials, in the operation and maintenance of the Building and the Leased Premises.

11.2 **Utilities** LESSOR shall bear the cost of heat, electricity, gas, sewer and water.

11.3 **Electrical Service** LESSOR shall provide adequate electrical service to the Leased Premises to accommodate LESSEE'S needs and the Building of which the Leased Premises is a part.

11.4 **Heating and Cooling** LESSEE acknowledges and agrees that the Building is approximately ninety (90) years old and that LESSOR will make its best efforts to provide a comfortable and energy efficient work environment within the Leased Premises within the physical limits of the Building and associated heating/cooling equipment. Cooling for the Leased Premises is provided by one (1) window air conditioning unit.

11.5 **Lighting**

- a. LESSOR shall use its best efforts to provide the Leased Premises with overhead lighting within the range of 20 to 50 foot-candle power at 30" above finished floor (AFF).
- b. LESSOR shall re-lamp light fixtures and replace light ballasts as needed.

11.6 **Restrooms** LESSOR shall provide the Leased Premises with separate restroom facilities for men and women. Such facilities shall be situated within the Leased Premises or be easily accessible therefrom.

- 11.7 Janitorial Service LESSOR shall provide janitorial services to the Leased Premises, Monday through Thursday between the hours of 8:00 a.m. to 4:30 p.m., and in accordance with the janitorial schedule set forth below:
- a. Empty trash containers daily from a centralized location within the Leased Premises.
 - b. Empty recycling once per week from a centralized location within the Leased Premises.
 - c. Vacuum carpeted areas once per week.
 - d. Dust vertical and horizontal surfaces twice per month.
- 11.8 Exterior Window Cleaning LESSOR shall, at its expense, wash the inside and outside of exterior windows of the Building as it deems necessary and as allowed under LESSOR's then current budget and staffing availability.
- 11.9 Trash Removal Services LESSOR shall, at its expense, provide trash disposal services.
- 11.10 Sustainable Building Guidelines LESSOR agrees, when feasible, to follow the State of Minnesota Sustainable Building Guidelines (www.msbg.umn.edu) for maintenance and improvements to the Leased Premises. Feasibility shall be determined by LESSOR, in its sole discretion, and consider such factors as long term costs and benefits over the term of the lease, performance, aesthetics, material/labor availability and impact on Building valuation.
- 11.11 Fire Safety LESSOR shall, at its expense, provide and maintain all fire extinguishers, fire alarms and fire detection systems for the Leased Premises and Building as required by applicable codes/ordinances and /or the state fire marshal.
- 11.12 Common Areas LESSOR shall provide sufficient light, heat and maintenance to the common and public access areas of the Building and the Leased Premises, including stairways, elevators, lobbies and hallways so that such areas shall be safe and reasonably comfortable.
- 11.13 Landscaping/Grounds Maintenance LESSOR shall, at LESSOR'S expense, maintain the landscaping, grounds, walkways and parking lot(s) surrounding the Leased Premises and the Building in good appearance, condition and repair, including, but not be limited to:
- a. Grass cutting, weed control and tree trimming as necessary;
 - b. Prompt or as soon as reasonably possible, removal of dead or dying trees and shrubbery;

- c. Seasonal flower planting and maintenance;
- d. Prompt or as soon as reasonably possible, removal of debris from grounds, walkways and parking lots;
- e. Sweeping, seal-coating, repair, resurfacing and re-striping of parking lot surfaces as needed.
- f. Prompt or as soon as reasonably possible, repair/replacement of up-heaved or sunken walkways and broken or damaged walkways and curbs.
- g. Keep the parking lot(s) and public sidewalks adjacent to the Building and any sidewalks or stairways leading from the public sidewalks to the Building free from debris and in good condition.

11.14 Snow Removal LESSOR shall keep the parking lot and public sidewalks adjacent to the Building and any sidewalks or stairways leading from the public sidewalks to the Building free from snow and ice. Snow plowing, snow shoveling and ice removal must be completed by 6:30 a.m. unless snow, wind or staffing conditions make this impossible. If the snow and ice removal is not completed by 6:30 a.m., LESSOR will make every effort to complete the snow removal as soon as possible.

11.15 General Maintenance and Repairs

- a. LESSOR shall, at its expense, maintain in working condition and good repair all appurtenances within the scope of this Lease, including, but not limited to: plumbing, wiring, electrical, heating (and, if applicable, cooling) devices, ductwork and any improvements or equipment added to the Leased Premises, whether or not the improvement or equipment was paid for by LESSEE.
- b. LESSOR shall not be responsible for repairs upon implements or articles which are the personal property of LESSEE, nor shall LESSOR bear the expense of repairs to the Leased Premises necessitated by damage caused by LESSEE beyond normal wear and tear.

11.16 Delivery of Leased Premises LESSOR covenants that it will deliver the Leased Premises to LESSEE in a clean and sanitary condition with all services and appurtenances included within the scope of this Lease in effect and in good running order.

11.17 Quiet Enjoyment LESSEE shall have the quiet enjoyment of the Leased Premises during the full Lease Term and any extension thereof.

11.18 Taxes and Assessments LESSOR shall be responsible for payment of all taxes and assessments upon the Building and land of which the Leased Premises is a part.

- 11.19 Exterior Lighting LESSOR shall provide adequate exterior lighting in the parking lots, building entrance/exits and loading dock areas.
- 11.20 Disability Access Guidelines LESSOR agrees to provide and maintain the Leased Premises and the Building of which the Leased Premises is a part with accessibility and facilities for persons with disabilities meeting code requirements, including but not limited to, Title II and III of the American with Disabilities Act (ADA), all applicable laws, rules, ordinances and regulations issued by any federal, state or local political subdivisions with jurisdiction and authority in connection with said property.
- 11.21 Energy Conservation In the event energy conservation measures are enacted by any State or Federal authority, it is hereby agreed that LESSOR shall reduce the quantity of utilities and services as may be specifically required by such governmental orders or regulations. Utilities, within the meaning of this article, include heat, cooling, electricity, water and all the sources of energy required to provide said service.
- 11.22 Pest Control LESSOR shall provide pest control for the Leased Premises and the Building of which the Leased Premises is a part.
- 11.23 Repainting and Carpet Replacement LESSOR shall, at its expense:
- a. Touch up paint from time to time as may be reasonably necessary to keep the walls in good order and condition.
 - b. Repair or replace vinyl wall covering at such time during occupancy that may be necessary.
 - c. Replace worn carpet at such time during occupancy as may be necessary.

12. DUTIES OF LESSEE

- 12.1 LESSEE shall allow access to the Leased Premises by LESSOR or its authorized representatives at any reasonable time during the Lease Term for any purpose within the scope of this Lease.
- 12.2 LESSEE shall not use the Leased Premises at any time for any purpose forbidden by law.
- 12.3 Assignment/Sublease LESSEE shall not assign, sublet or otherwise transfer its interest in this Lease without the prior written consent of LESSOR.
- 12.4 LESSEE shall observe reasonable precautions to prevent waste of heat, electricity, water, air conditioning and any other utility or service, whether such is furnished by LESSOR or obtained and paid for by LESSEE.

13. **DESTRUCTION OF PREMISES** If the Leased Premises shall be destroyed or damaged by fire, tornado, flood, civil disorder or any cause whatsoever, so that the Leased Premises become untenable or LESSEE is unable to conduct its business, the rent payable hereunder shall be abated from the time of such damage and LESSEE shall have the option of terminating this Lease immediately or allowing LESSOR such amount of time as LESSEE deems reasonable to restore the damaged Leased Premises to tenantable condition.
14. **INSURANCE**
- 14.1 **Property Damage** It shall be the duty of LESSOR and LESSEE to maintain insurance or self-insurance on their own property, both real and personal. Notwithstanding anything apparently to the contrary in this Lease, LESSOR and LESSEE hereby release one another and their respective partners, officers, employees and property manager from any and all liability or responsibility to the other or anyone claiming through or under them, by way of subrogation or otherwise, for loss or damage, even if such loss or damage shall have been caused by the fault or negligence of the other party or by anyone for whom such party may be responsible.
- 14.2 **Liability** LESSOR and LESSEE agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. LESSEE'S liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. §3.736, and other applicable law.
15. **BUILDING ACCESS AND SERVICES**
- 15.1 LESSOR shall provide Building access and services to the Leased Premises from 7:30 a.m. to 6:00 p.m. Monday through Friday.
- 15.2 LESSOR shall provide access to the Leased Premises seven (7) days per week, twenty four (24) hours per day for authorized employees of LESSEE.
16. **NEW LESSOR** In the event the Leased Premises or the Building of which the Leased Premises is a part shall be sold, conveyed, transferred, assigned, leased or sublet, or if LESSOR shall sell, convey, transfer or assign this Lease or rents due under this Lease, or if for any reason there shall be a change in the manner in which the rent reserved hereunder shall be paid to LESSOR, proper written notice of such change must be delivered to LESSEE as promptly as possible. LESSEE'S "Transfer of Ownership of Lease" document shall be executed by the parties hereto in order that the State of Minnesota Management and Budget is provided with authorization to issue payments to a new party.
17. **DEFAULT BY LESSOR** If LESSOR shall default in the performance of any of the terms or provisions of this Lease, LESSEE shall promptly so notify LESSOR in writing. If LESSOR shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such character as to require more than thirty (30) days to cure and LESSOR shall fail to

commence to do so within thirty (30) days after receipt of such notice and thereafter diligently proceed to cure such default, then in either event, LESSEE, at its sole option, may terminate this Lease upon thirty (30) days prior written notice. In the event LESSEE elects to terminate this Lease, said termination shall not limit LESSEE'S rights to damages caused by the breach and failure to cure. This provision in no way limits LESSEE'S other remedies for breach under common law or this Lease.

18. **AUDIT** Pursuant to Minn. Stat. §16C.05, subd. 5, the books, records, documents and accounting procedures and practices of LESSOR relevant to this Lease shall be subject to examination by the State and/or Legislative Auditor, as appropriate, for a minimum of six (6) years.
19. **AFFIRMATIVE ACTION**
- 19.1 If the Lease amount exceeds \$100,000 and the LESSOR employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the LESSOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. Rules Parts 5000.3400-5000.3600. A LESSOR covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.
- 19.2 Minn. Stat. § 363A.36 Minn. Stat. § 363A.36 requires the LESSOR to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event.
- 19.3 Minnesota Rule 5000.3550 - Disabled Individuals Affirmative Action Clause
- a. LESSOR shall not discriminate against any employees or applicants for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. LESSOR agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- b. LESSOR agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

- c. In the event of LESSOR'S noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. §363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - d. LESSOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices shall state LESSOR'S obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - e. LESSOR shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that LESSOR is bound by the terms of Minn. Stat. §363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.
20. **SMOKING** Pursuant to Minn. Stat. §16B.24, subd. 9, LESSOR and LESSEE shall not permit smoking in the Leased Premises.

21. **HAZARDOUS SUBSTANCES**

21.1 **General**

- a. "Hazardous Substances" is defined to mean any and all substances or materials that are categorized or defined as hazardous or toxic under any present or future local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, cleanup or disclosure including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended ("CERCLA"), the Resources Conservation and Recovery Act, as now or hereafter amended ("RCRA"), the Superfund Amendments and Reauthorization Act of 1980, as now or hereafter amended ("TSCA") the Minnesota Environmental Response and Liability Act ("MERLA"), or any similar statutes or regulations, and any wastes, pollutants and contaminants (including without limitation, materials containing asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls ("PCBs") and petroleum products including gasoline, fuel oil, crude oil and various constituents of such products).
- b. Each party warrants and covenants to the other party that it did not, and will not in the future, install, use, generate, store, dispose of or release on or about the Building of which the Leased Premises is a part, except for immaterial quantities of any Hazardous Substances customarily used in the construction and maintenance of like properties or in other uses of the Leased Premises or the

Building or land of which it is a part, which have been used in accordance with applicable laws, statutes, regulations and ordinances then in effect. LESSOR further agrees to indemnify and hold LESSEE (and its officers, partners, employees, agents and directors) harmless from and against any claim, damage, loss, fine or any other expense (including without limitation clean-up costs, court costs, attorneys' fees, engineering or consultant fees, other costs of defense and sums paid in settlement of claims) arising out of LESSOR'S installation, use, generation, storage, disposal or release of any Hazardous Substances in or about the Leased Premises or the Building or the land of which the Leased Premises is a part.

- c. LESSOR represents and warrants to the best of its knowledge there are no Hazardous Substances present within the Building or the land of which the Leased Premises is a part. In the event a qualified environmental testing company determines that Hazardous Substances do exist, in greater than immaterial quantities, in or about the Leased Premises or the Building or land of which the Leased Premises is a part, LESSEE, at its option, may terminate this Lease with sixty (60) days written notice to LESSOR.

21.2 Storage Tank LESSOR has not, and to the best of its knowledge no prior owner or occupant installed in, on or about the Leased Premises or the Building or land of which the Leased Premises is a part, any storage tank containing Hazardous Substances, including, but not limited to: petroleum, crude oil or by-products of petroleum or crude oil.

21.3 Asbestos To the best of LESSOR'S knowledge, the Building does not contain any material quantities of asbestos.

22. LAWS GOVERNING This Lease shall be construed and enforced in accordance with the laws of the State of Minnesota.

23. GOVERNMENT DATA PRACTICES ACT COMPLIANCE

23.1 LESSOR must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by LESSEE in accordance with this Lease and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by LESSOR in accordance with this Lease. The civil remedies of Minnesota Statutes, section 13.08, apply to LESSOR and LESSEE.

23.2 Minnesota Statutes, Chapter 13, provides that all government data are public unless otherwise classified. If LESSOR receives a request to release the data referred to in this Clause, LESSOR must immediately notify LESSEE and consult with LESSEE as to how LESSOR should respond to the request. LESSOR'S response shall comply with applicable law, including that the response is timely and, if LESSOR denies access to the data, that LESSOR'S response references the statutory basis upon which LESSOR

relied. LESSOR does not have a duty to provide public data to the public if the public data is available from LESSEE.

24. **NOTICES** All notices or communications between LESSOR and LESSEE shall be deemed sufficiently given or rendered if in writing and delivered to either party personally or sent by registered or certified mail addressed as follows:

LESSOR:

City of Duluth
Attn: Finance Department
411 West 1st St
Duluth MN 55802

LESSEE:

Real Estate and Construction Services
Department of Administration
50 Sherburne Ave # 309
St Paul MN 55155

EXHIBITS:

Exhibit A Floor Plan (890 usf)

THIS PAGE IS INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have set their hands on the date(s) indicated below intending to be bound thereby.

LESSOR:
CITY OF DULUTH

LESSOR certifies that the appropriate person(s) have executed the Lease on behalf of LESSOR as required by applicable articles, bylaws, resolutions or ordinances.

By _____

Title Mayor

Date _____

By _____

Title City Clerk

Date _____

APPROVED:
CITY OF DULUTH

By _____

Title City Attorney

Date _____

By _____

Title City Auditor

Date _____

LESSEE:
STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
COMMISSIONER

By _____

Real Estate and Construction Services

Date _____

APPROVED:
STATE OF MINNESOTA
OFFICE OF THE STATE AUDITOR

By _____

Title _____

Date _____

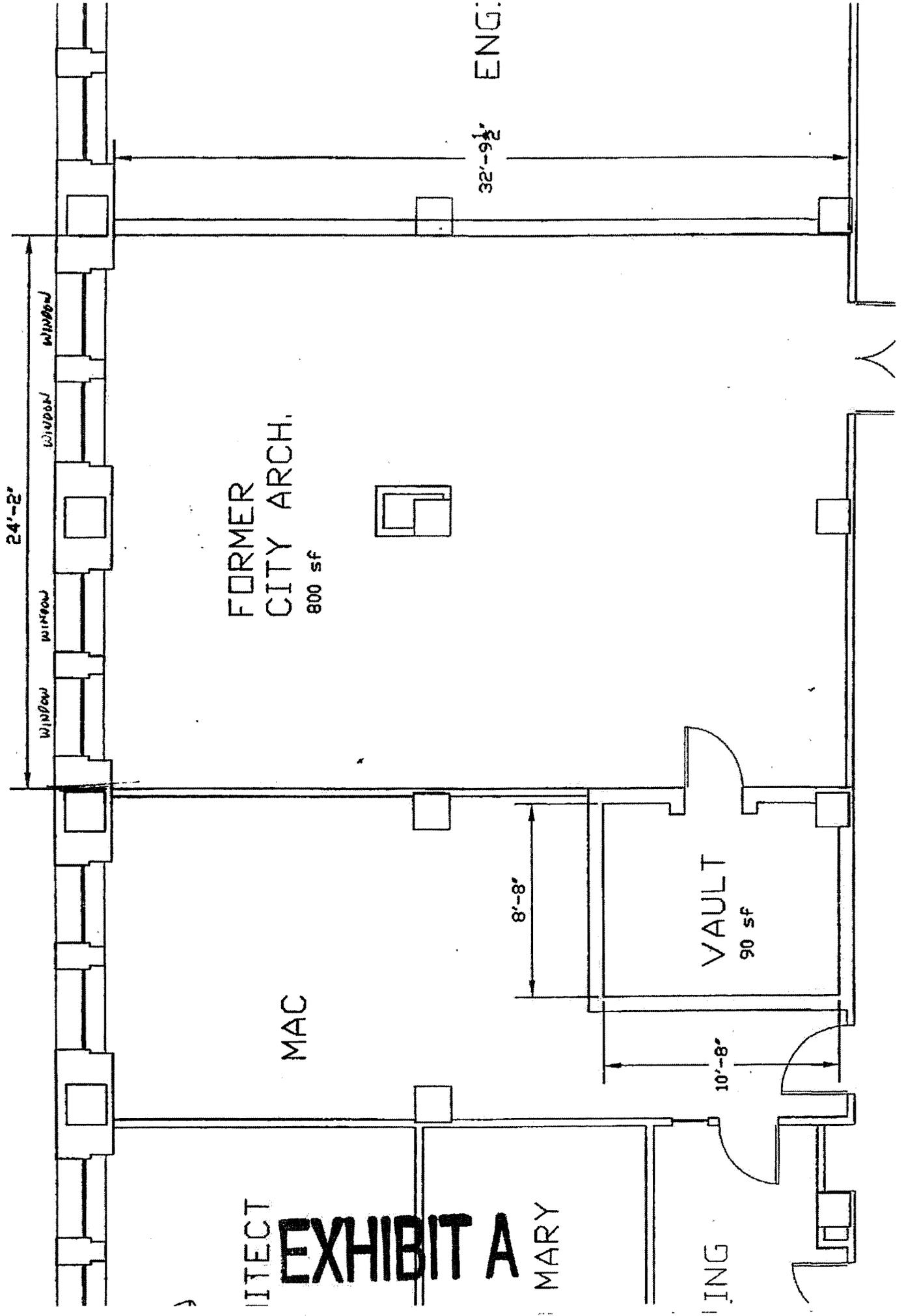
STATE ENCUMBRANCE VERIFICATION

Individual signing certifies that funds are encumbered as required by Minn. Stat. §16A.15 and §16C.05.

By _____

Date _____

Contract No. _____



FORMER
CITY ARCH.
800 sf

MAC

VAULT
90 sf

8'-8"

10'-8"

32'-9 1/2" ENG.

24'-2"

Window Window Window

Window

Window

TECT

EXHIBIT A

MARY

ING