

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0170R

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A MINNESOTA HISTORICAL AND CULTURAL GRANT AGREEMENT WITH THE MINNESOTA HISTORICAL SOCIETY AND AUTHORIZING A SUBAGREEMENT WITH THE SACRED HEART MUSIC CENTER

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a Minnesota historical and cultural grant agreement with the Minnesota Historical Society, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, accepting a grant in the amount of \$168,525, related to the roof and tower restoration of the Sacred Heart Music Center, payable into Fund 262 (community development), Agency 020 (business and community development), Object 4220-02 (revenue).

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into Minnesota historical and cultural subgrant agreement with Sacred Heart Music Center, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, to implement the rehabilitation program of the Sacred Heart Music Center, in the amount of \$168,525 payable from Fund 262 (community development), Agency 020 (business and community

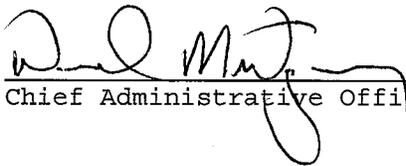
development), Object 5434 (projects).

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

CD KH:bel 03/30/2012

STATEMENT OF PURPOSE: The former Sacred Heart Cathedral is on the National Register of Historic Places and was acquired by the Sacred Heart Music Center in 1987. Due to the age of the structure, numerous upgrades have occurred including; a new heating system, accessible bathrooms, re-moveable seating, reconstruction of entryway, upgraded wiring and restoration of the Felgmaker organ. The roof and steeple have leaked and the steeple has become unstable due to age and environmental changes over the years. This grant seeks to stabilize the steeple preventing its collapse and stopping water from entering the structure causing damage to the organ and other features within the Center. This grant is phase one; the second phase will see re-roofing the structure. The grant funding source is the Minnesota Legacy Fund for the preservation of historic places. The grant will be matched with \$5,040 in staff time and \$18,570 from Sacred Heart Music Center.

MINNESOTA HISTORICAL SOCIETY
MINNESOTA HISTORICAL AND CULTURAL GRANT AGREEMENT

<u>Account No.</u>	<u>Fiscal Year</u>	<u>Object Code</u>	<u>MHS Grant No.</u>	<u>Amount</u>
02484	2012	5260	1110-07439	\$168525 grant \$ 25040 match

This agreement is made by and between the Minnesota Historical Society, 345 Kellogg Boulevard West, Saint Paul, Minnesota 55102, hereinafter called the SOCIETY, acting through its Director, and, City of Duluth, 407 City Hall, Duluth, Minnesota, 55802 herein called the GRANTEE.

WHEREAS, the Minnesota Legislature, under Minnesota Laws 2011, Chapter 6, Article 4, Section 2, Subdivision 5, approved funding to the SOCIETY for Statewide Historic and Cultural Grants for the purpose of supporting history programs and projects operated or conducted by or through local, county, regional, or other historical or cultural organizations; or for activities to preserve significant historic and cultural resources such as that which is contemplated by GRANTEE, and

WHEREAS, the GRANTEE and its *Sacred Heart Cathedral: Roof and Tower Restoration* project meets the eligibility criteria for funding under the grants program; and

WHEREAS, the SOCIETY'S Executive Council approved a grant recommended for funding by the Historical Resources Advisory Committee on January 19, 2012.

NOW THEREFORE, in consideration of the award of the grant, the GRANTEE agrees to administer said grant in accordance with the following policies and procedures:

I. PROJECT DESCRIPTION

- A. The project period for this activity is from February 1, 2012 to June 30, 2013.
- A. The project will be carried out in accordance with the provisions of the *Minnesota Historical and Cultural Grants Manual*. The project will also be carried out in accordance with the GRANTEE'S Minnesota Historical and Cultural Grants Program Grant Application [and its approved Scope of Work Form (*if applicable*)]. Page 1 of the application is included as Attachment A, and the entire application is hereby incorporated by reference. The approved Scope of Work Form is included as Attachment B and hereby incorporated by reference, and supersedes the Scope of Work Form included in the GRANTEE'S grant application. All work on the project will be in conformance to the **Secretary of the Interior's Standards for the Treatment of Historic Properties**.
- B. The official project budget as approved by the SOCIETY supersedes the GRANTEE'S grant application budget and is included as Attachment C and hereby incorporated by reference.

- C. Only the items set forth in the Approved Project Budget (Attachment C) may be charged against the grant project.
- D. Any project expense not specifically approved in the Approved Project Budget will not be allowed except upon prior written request by the Grantee and prior written approval by the SOCIETY.
- E. Changes in the Approved Project Budget may not exceed twenty (20) percent of any line item. Changes occurring after the project begins that exceed twenty (20) percent of any line item will not be allowed except upon prior written request by the Grantee and prior written approval by the Society.
- F. Changes in the Project Completion Date will not be allowed except upon prior written request by the Grantee and prior written approval by the SOCIETY.
- G. No grant funds may be used to pay indirect costs, commonly referred to as overhead.

II. ASSURANCES

- A. The GRANTEE understands that this agreement is funded by a grant financed by the State of Minnesota.
- B. The GRANTEE agrees that this project will be administered and conducted in accordance with the following:
 - 1. Minn. Stat. 16B.98 for Grants Management;
 - 2. Minn. Stat. Chap. 177.41-44 regarding prevailing wage rates and contracts and corresponding Rules 5200.1000 to 5200.1120
 - 3. *Secretary of the Interior's Standards for the Treatment of Historic Properties*;
- C. The GRANTEE agrees to sign a *Letter of Agreement Governing Use of Historic Site* assuming responsibility to maintain the historic property in a satisfactory manner for a specified number of years after the grant-funded project is completed. For grants up to \$20,000, a ten (10) year letter of agreement is required; for grants greater than \$20,000, a twenty (20) year letter of agreement is required.
- D. The GRANTEE shall hold the SOCIETY and the State of Minnesota harmless from any loss, damage, or expense including reasonable attorneys' fees and other costs of defense, arising as the result of any claim, action, complaint, proceeding, or litigation of any kind whatsoever, directly or indirectly brought about as a result of the funded project.
- E. The GRANTEE agrees that in hiring of common or skilled labor for the performance of any work on the grant project that no contractor, material supplier or vendor shall, by reason of race, creed, color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age, discriminate against any person or persons who are citizens of the

United States, or resident aliens, who are qualified and available to perform the work to which the employment relates.

- F. This Agreement may be canceled or terminated by the SOCIETY, and all money due, or to become due hereunder may be forfeited for a second or any subsequent violation of the terms of this section.

The GRANTEE agrees no contractor, material supplier or vendor shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in the preceding paragraph, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

- G. The GRANTEE assures that no part of the project budget will be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a member of the Minnesota Legislature, to favor or oppose, by vote or otherwise, any legislation or appropriation by the Legislature, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation. This shall not prevent communicating to members of the Minnesota Legislature on the request of any member or to the Legislature, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.
- H. The GRANTEE agrees to post a sign in a prominent location while project work is in progress substantially incorporating the following acknowledgment:

"This project has been financed in part with funds provided by the State of Minnesota from the Arts and Cultural Heritage Fund through the Minnesota Historical Society."

- I. The GRANTEE also agrees that any publicity releases, informational brochures, public reports, publications, and public information relating to approved projects must acknowledge funding assistance from the State of Minnesota from the Arts and Cultural Heritage Fund. Any written materials shall include the following:

"This project has been financed in part with funds provided by the State of Minnesota from the Arts and Cultural Heritage Fund through the Minnesota Historical Society."

III. PROCEDURES FOR CONTRACTING SERVICES AND MATERIALS

- A. Any services and/or materials that are expected to cost \$20,000 or more must undergo a formal notice and bidding process. In addition, any services to be performed by such professionals as architects, consultants, engineers, historical researchers, etc. that are expected to cost between \$7,500 to \$19,999 must be scoped out in writing and offered to a minimum of three (3) bidders. Evidence of the offering along with copies of the bids received must be included in the Grantee's financial records for the project.

- B. For purchases between \$500 and \$5,000, the Grantee must maintain financial records that verify the cost was competitively based on at least three verbal quotes. For purchases greater than \$5,000 and less than \$20,000, the Grantee must maintain financial records that verify the cost was competitively based on at least three written quotes submitted in response to written specifications.
- C. For contracting services, the Grantee will follow the requirements of Minn. Stat. Chap. 177.41-44 regarding prevailing wage rates and contracts and corresponding Rules 5200.1000 to 5200.1120.

IV. PAYMENT SCHEDULE

- A. Once a Grant Agreement and a Letter of Agreement have been fully executed the Grantee will be notified when project work may begin.
- B. Grantee will receive payments from the SOCIETY in accordance with the following for up to eighty percent (80%) of the grant award.

Project Milestone:	Payment Percentage
1. Execute agreement	30%
2. Upon submission and approval of repointing samples	30%
3. SOCIETY Site visit/monitoring inspection	20%

- C. Retainage. A total of twenty percent (20%) of the grant funds will be released as the final payment after work is complete and fiscal documentation and the project completion report, have been reviewed and accepted by the SOCIETY.

V. FINANCIAL DOCUMENTATION AND FINAL REPORTING

- A. The GRANTEE will submit all financial documentation for project expenditures and a completed Project Activity Report with photographs documenting project work on or before July 31, 2013. (Work on the project must be concluded by June 30, 2013.)
- B. The financial documentation for project costs shall include acceptable types of documentation such as: (1) copies of invoices/receipts, (2) copies of project personnel timesheets (if applicable), (3) copies of in-kind and/or donated services timesheets (if applicable), and (4) copies of donated materials forms.
- C. The financial documentation should be submitted to Grants Office, Minnesota Historical Society, 345 Kellogg Boulevard West, St. Paul, Minnesota 55102.

VI. AUDIT

- A. The GRANTEE must submit a copy of all audited financial statements completed pursuant to OMB Circular A-133 for all fiscal years which include the project period, or a copy of the single audit act report for the same. These must be submitted to State Historic Preservation

Office, Minnesota Historical Society, 345 Kellogg Boulevard West, Saint Paul, Minnesota 55102 within one hundred and twenty (120) days of their completion.

- B. The Grantee must maintain records and accounts consistent with generally accepted accounting principles, and to provide for such fiscal control as is necessary to assure the proper disbursing of and accounting for grant funds. The Grantee must maintain records and accounts for this project on file for a minimum of six (6) years after approval of the Final Report.
- C. The Grantee agrees to maintain records to document any matching funds claimed as part of the project. The Grantee further agrees to secure reasonable written proof of the value of Staff or Volunteer Labor, and for Donated Materials contributed to the project.
- D. The Grantee agrees that accounts and supporting documents relating to project expenditures will be adequate to permit an accurate and expeditious audit. An audit may be made at any time by the SOCIETY, its designated representatives, or any applicable agency of the State of Minnesota.

VII. AMENDMENTS AND CANCELLATION

A. Amendments

Any significant variations from proposed work, costs, and/or time frames described in this agreement which are experienced or anticipated during the course of the project and any significant problems, delays, or adverse conditions which materially affect planned performance should be submitted in writing to Grants Office, Minnesota Historical Society, 345 Kellogg Boulevard West, Saint Paul, Minnesota 55102.

The SOCIETY will respond in writing, either approving or not approving the changes, and may amend the agreement if deemed necessary. Variations which are not known until the conclusion of the project may be submitted with the Financial Documentation; however, the GRANTEE understands that costs may be disallowed if changes are not approved. Any amendments 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.

B. Cancellation

The SOCIETY may, upon 30 days' prior written notice, cancel this agreement if it determines that the GRANTEE has materially breached any term or condition.

In addition, both parties may mutually agree to cancel the agreement if they determine that the project will not produce beneficial results commensurate with further expenditure of funds or because of circumstances beyond the control of either party. In the event of cancellation, the SOCIETY may withhold proceeds of the Grant; demand that the GRANTEE return any already disbursed proceeds to the Finance Commissioner; and seek any additional legal or equitable remedy(ies).

Finally, the GRANTEE hereby acknowledges that the proceeds of the Grant are being financed in part with funds provided by the State of Minnesota and administered through the Society, and that, per Laws of Minnesota, 2011, First Special Session, Chapter 6, Article 5, Section 8 (b), the funding will be canceled to the extent a court determines that the appropriation, or portion thereof, unconstitutionally substitutes for a traditional source of funding.

I have read the above agreement and agree to abide by all of its provisions. Upon execution, this Agreement controls all activities during the project period.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date(s) indicated below intending to be bound thereby.

Minnesota Historical Society
345 Kellogg Boulevard West
Saint Paul, Minnesota 55102

City of Duluth
407 City Hall
Duluth, Minnesota 55802

D. Stephen Elliott, Director and State (date)
Historic Preservation Officer

(signature - authorized official)

(print name) (date)

Barbara Mitchell Howard, Head, Historic (date)
Preservation Department and Deputy
State Historic Preservation Officer

(title)

Kathryn Ludwig (date)
Contracting Officer

Attachment A

City of Duluth

R-1110-07439

Request for \$492,897.00

The Project will complete the restoration of the Bell Tower and Spire and restore section of roof, to prevent leaks and further damage to the Sacred Heart Music Center.

Status: Pending External Review

Applicant City of Duluth
Address 407 City Hall, Duluth, MN, 55802
Project Director Keith Hamre
Authorized Officer Charles Froseth

Project Title Sacred Heart Roof and Tower Restoration
Project Summary The Project will complete the restoration of the Bell Tower and Spire and restore section of roof, to prevent leaks and further damage to the Sacred Heart Music Center.

Pre-Application Review? Yes
Category Historic Preservation Projects
Sub-Category Historic Properties
Fed Number
Cycle Fall
Fiscal Year 2012

Board Authority Date
Start date 3/1/2012
End date 6/30/2013 (Original)
Extension date
Admin Lead Mandy Skypala
Internal Reviewer Natascha Wiener

Amount Requested \$492,897
Match Amount Requested \$25,040
Amount Recommended

SCOPE OF WORK FORM
(continued page 2)

Attachment B

Sacred Heart Cathedral

201 W. 4th Street Duluth, MN 55802

Property Name

Property Address

DETAILED DESCRIPTION OF WORK: Complete blocks below. See instructions on page 1.

Date: 10/5/2011

<p>No. 1</p>	<p>Architectural feature <u>General conditions required</u> Approximate date of feature _____</p>	<p>Describe work and impact on existing feature: Project management, supervision and mobilization, electrical work to serve the work areas plus erection of scaffolding to access work area 90 ft. above sidewalk. A crane on site at different times of the project to hoist materials up to the work areas.</p>
<p>Describe existing feature and its condition: Essential work elements which are necessary to begin and control the overall restoration project. (Phase 1 & 2)</p> <p>Photo no. <u>N/A</u> Drawing no <u>N/A</u></p>		
<p>No. 2</p>	<p>Architectural feature <u>Existing debris in 3 work areas</u> Approximate date of feature _____</p>	<p>Describe work and impact on existing feature: Move insulation out of Level 3 to another location. Remove debris from large void area above ceiling in Level 2a, which is accessed from level 3. Install new aluminum ladder from level 6 to level 8 which will allow workmen and engineer to access the spire area above if engineer requires reinforcing.</p>
<p>Describe existing feature and its condition: Level 3. Existing piles of insulation bundles are located in areas which prohibit workmen from access to install structural steel. Remove debris above ceiling in Level 2a which is damp and excess weight on ceiling. Existing crude ladder to spire area is unsafe. (Phase 1)</p> <p>Photo no. <u>N/A</u> Drawing no <u>N/A</u></p>		
<p>No. 3</p>	<p>Architectural feature <u>Bell tower floor</u> Approximate date of feature <u>ca 1894</u></p>	<p>Describe work and impact on existing feature: Remove existing roofing material from floor and determine structural condition of sub-floor and if sound then overlay with T&G 3/4" plywood. Provide holes for 8 new tube steel columns to pass thru to level 4. After completion of masonry work, 60 mil EPDM must be adhered to the plywood and a 4" high plywood base around the wall perimeter. A 1 1/2" wood curb and a hinged access panel with lock must be installed across the ships-ladder opening.</p>
<p>Describe existing feature and its condition: The existing floor is covered with several layers of tar paper and other debris. The opening to ships-ladder below is a sheet of particle board which if laid askew allows rainwater, snow and birds to access lower levels. (Phase 1)</p> <p>Photo no. <u>N/A</u> Drawing no <u>S-1/9</u></p>		
<p>No. 4</p>	<p>Architectural feature <u>Timbers supporting spire</u> Approximate date of feature <u>ca 1894</u></p>	<p>Describe work and impact on existing feature: Install new tube steel columns and steel angle crossbraces to support spire timbers and projecting stones which are embedded in brick walls which will be rebuilt to restore structural integrity of entire bell-tower & steeple. NOTE: Emergency measures were taken in 2010 to stabilize the spire and insure stability of structure in case of severe weather. This was accomplished by means of several steel plates and steel cables in tension.</p>
<p>Describe existing feature and its condition: Existing stones projecting from brick walls are being held in crumbling brick walls and fastened to spire with steel plates of which 3 out of 8 have rusted clear thru and provide no security of spire stability. (Phase 1)</p> <p>Photo no. <u>2,3,4</u> Drawing no <u>S-1/1,4,12</u></p>		

**SCOPE OF WORK FORM
(continued-page 4)**

Sacred Cathedral _____

201 W. 4th Street Duluth, MN 55802

Property Name

Property Address

Date: 10/5/2011

<p>No. <u>9</u></p>	<p>Architectural feature <u>Steeple exterior brick</u> Approximate date of feature <u>ca 1894, 1970s</u></p>	<p>Describe work and impact on existing feature: Reconstruct bell tower walls after installation of steel support structure in small sections. Salvage & clean existing exterior brick, and obtain mortar samples for testing, new mortar will match texture, color, strength joint profile and width, and samples will be reviewed by SHPO. After interior crumbled brick is replaced with core filled CMU's, then apply brick ties at 7 1/2" o.c. to secure relaid existing brick to inner wall. If not enough original brick can be salvaged, architect will find same type (Pressed, smooth face colonial red brick) at Sioux City Brick Company, (Plant in Adel, Iowa). Install new copper flashing at roof line. Wash brick 7 days after installation w/ 100 psi to 250 psi water. Impact- Prevent future leaks & improve prominent facade of building.</p>
<p>Describe existing feature and its condition: Facade Brick at center steeple with raked & slush joints in poor condition. Mortar in fair condition but interior quality of brick is very poor (crumbling) due to leaks around perimeter. See No. 6. (Phase 2)</p> <p>Photo no. <u>5,6,13,16,18,24</u> Drawing no <u>S-1/1,2,3,4</u></p>		
<p>No. <u>10</u></p>	<p>Architectural feature <u>Partial shingle replacement</u> Approximate date of feature <u>1894, 1970s</u></p>	<p>Describe work and impact on existing feature: Install new asphalt shingles to match existing multi-colored shingles 240 lb. fiberglass reinforced on roof adjacent tower (12 ft perimeter only). Install original style copper flashing to replace aluminum flashing that was used as temporary fix, as required.</p>
<p>Describe existing feature and its condition: Existing asphalt shingles around tower are at least 30 years old on the east side of main roof and many are in poor condition. (Phase 2)</p> <p>Photo no. <u>20,21,22,27,28</u> Drawing no <u>N/A</u></p>		
<p>No. <u>11</u></p>	<p>Architectural feature <u>Ceiling in stairs</u> Approximate date of feature <u>ca 1894</u></p>	<p>Describe work and impact on existing feature: 5/8" type S gypsum board will be used to restore stairwell ceilings. Walls may be restored with spackel skim coat. Prime and paint to match adjacent areas.</p>
<p>Describe existing feature and its condition: Lath & plaster ceilings & walls in both the east and west stairwells which must be restored after leaks have been sealed. (Phase 1)</p> <p>Photo no. <u>25,26</u> Drawing no <u>N/A</u></p>		
<p>No. <u>12</u></p>	<p>Architectural feature <u>Arch. & Engineering Work</u> Approximate date of feature _____</p>	<p>Describe work and impact on existing feature: During the reconstruction or restoration phase, both the architect and engineer must inspect the work and report on any changes in existing conditions, plus certify labor and materials as reflected in Requests for Payment.</p>
<p>Describe existing feature and its condition: Most analysis of existing conditions and design details for restoration were completed prior to this application in order to obtain detailed bids from qualified contractors to determine realistic cost figures. (Phase 1 & 2)</p> <p>Photo no. _____ Drawing no <u>N/A</u></p>		

Scope of Work Form
for
Historic Preservation Projects

Property Name
Property Address

Date: _____
Project Number: _____

Number	Architectural feature:
	Approximate date of feature:
Describe existing feature and its condition:	

Describe work and impact on existing feature:
★ Brick or mortar shall be tested to establish correct strength of repointing mortar.

Photo no. _____ Drawing no. _____

Number	Architectural feature:
	Approximate date of feature:
Describe existing feature and its condition:	

Describe work and impact on existing feature:
★ Repointing mortar shall match historic mortar in strength, color, texture and joint width + profile.

Photo no. _____ Drawing no. _____

Number	Architectural feature:
	Approximate date of feature:
Describe existing feature and its condition:	

Describe work and impact on existing feature:
★ Spec and repointing samples should be reviewed + approved by SHPD before proceeding.

Photo no. _____ Drawing no. _____

Number	Architectural feature:
	Approximate date of feature:
Describe existing feature and its condition:	

Describe work and impact on existing feature:
★ Good quality close-up color photographs of before + after

Photo no. _____ Drawing no. _____

Number	Architectural feature:
	Approximate date of feature:
Describe existing feature and its condition:	

Describe work and impact on existing feature:
★ Masonry repointing must accompany final report
★ Any brick replacement must match historic brick

Project Director: _____ (signature) _____ (date)

GRANTS OFFICE USE ONLY

Historical Architect: Nalanda D. 11/19/12 (date)

- ____ Approved
- ____ Not Approved
- ____ Items Not Approved

Attachment C

MINNESOTA HISTORICAL SOCIETY
Historic Preservation Department
Minnesota Historical and Cultural Grants

Approved Project Budget

Grantee: *City of Duluth*
MHS Grant #: *1110-07439*
Project: *Sacred Heart Cathedral: Roof and Tower Restoration*

<i>BUDGET ITEM(S)</i>	<u>GRANT</u>	<u>GRANTEE MATCH</u>		<u>TOTAL</u>
		<i>Cash</i>	<i>In-Kind</i>	
General Conditions	\$6,470			\$6,470
Crane and Operator	\$33,825			\$33,825
Interior Debris and Material Clean-up	\$2,500			\$2,500
Shoring and Scaffolding for Construction	\$43,000			\$43,000
Structural Steel System for Spire & Bells	\$56,300			\$56,300
Level 5 Floor/Roof Framing Repairs	\$5,900			\$5,900
Level 5 Reroof and flashing	\$6,700			\$6,700
Building Permit	\$1,534			\$1,534
Payment and Performance Bond	\$1,271			\$1,271
Contingency	\$11,025			\$11,025
City Staff Project Admin, Payment Requests			\$1,840	\$1,840
City Staff Project Admin, Labor Rates Review			\$3,200	\$3,200
Architectural, eng. inspections, Project admin		\$18,570		\$18,570
TOTAL	\$168,525	\$18,570	\$5,040	

MINNESOTA HISTORICAL AND CULTURAL SUBGRANT AGREEMENT

<u>Account No.</u>	<u>Fiscal Year</u>	<u>Object Code</u>	<u>MHS Grant No.</u>	<u>Amount</u>
02484	2012	5260	1110-07439	\$168,525 grant \$23,610 match

This Subgrant Agreement is made by and between the City of Duluth, 407 City Hall, and 411 West Fourth Street, Duluth, MN, 55802 (the "City") and Sacred Heart Music Center, 201 W 4th St, Duluth, MN 55802 (the "Subgrantee").

WHEREAS, the Minnesota Legislature, under Minnesota Laws 2009, Chapter 172, Article 4, Section 2, Subdivision 4, approved funding to the Minnesota Historical Society (the "Society") for Statewide Historic and Cultural Grants for the purpose of supporting history programs and projects operated or conducted by or through local, county, regional, or other historical or cultural organizations; or for activities to preserve significant historic and cultural resources, and

WHEREAS, the Subgrantee is the owner of the historic Sacred Heart Cathedral at 201 W. 4th St in Duluth, Minnesota; and

WHEREAS, the Subgrantee desires to rehabilitate and restore the roof and tower of the Cathedral (the "Sacred Heart Roof and Tower Restoration Project"); and

WHEREAS, the City, as sponsor for the Subgrantee, made application for Statewide Historic and Cultural Grant funding for the Project; and

WHEREAS, the Historical Resources Advisory Committee recommended the project for funding, and its recommendation was approved by the Society's Executive Council on January 19, 2012; and

WHEREAS, the City entered into Minnesota Historical and Cultural Grant agreement with the Society dated February 1, 2012 (the "Agreement"); and

WHEREAS, the parties desire to enter into this Subgrant Agreement, in order to provide funding to the Subgrantee for purposes of the Project under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of this Subgrant Agreement, the receipt and sufficiency of which is hereby acknowledged, the Subgrantee agrees to administer said Subgrant in accordance with the following terms and conditions:

1. PROJECT DESCRIPTION

- A. The Project period for this activity is from February 1, 2012 to June 30, 2013 at which time the Work on the Project must be concluded (the "Project Completion Date").

Subgrantee shall carry out the Project in accordance with the provisions of the *Minnesota Historical and Cultural Grants Manual* and with the City's Minnesota Historical and Cultural Grants Program Grant Application and its approved Scope of Work Form. Page

1 of the application is included as Attachment A, and the entire application is hereby incorporated by reference. The approved Scope of Work Form is included as Attachment B and hereby incorporated by reference, and supersedes the Scope of Work Form included in the City's grant application. All work on the Project shall be in conformance to the Secretary of the Interior's Standards for Historic Preservation Projects.

- B. The official Project budget as approved by the Society supersedes the City's grant application budget and is included as Attachment C and hereby incorporated by reference (the "Approved Project Budget").
- C. Only the items set forth in the Approved Project may be charged against the Grant Project.
- D. Any Project expense not specifically approved in the Approved Project Budget shall not be allowed under this Subgrant Agreement except upon prior written request by the Subgrantee and prior written approval by the City and the Society.
- E. Changes in the Approved Project Budget may not exceed twenty (20) percent of any line item. Changes occurring after the Project begins that exceed twenty (20) percent of any line item will not be allowed except upon prior written request by the Subgrantee and prior written approval by the City and the Society,
- F. Changes in the Project Completion Date shall not be allowed except upon prior written request by the Subgrantee and prior written approval by the City and the Society.
- G. No grant funds may be used to pay indirect costs, commonly referred to as overhead.

11. ASSURANCES

- A. The Subgrantee understands that this Subgrant Agreement is funded by a grant financed by the State of Minnesota.
- B. The Subgrantee agrees that this Project will be administered and conducted in accordance with the following:
 - 1. Mann, Stat. 168.98 for Grants Management
 - 2. Minn. Stat. Chap. 177.41-44 regarding prevailing wage rates and contracts and corresponding Rules 5200.1000 to 5200.1120
 - 3. Secretary of the Interior's Standards for Historic Preservation Projects
 - 4. The Minnesota Historical and Cultural Grant Agreement between the City and the Society dated February 1, 2012
- C. Upon execution of this Subgrant Agreement, the Subgrantee shall sign a *Letter of Agreement Governing Use of Historic Site* (the "Letter of Agreement") in the form attached hereto as Attachment D and file the same in the office of the St. Louis County Recorder and pay all costs associated there with. Upon recording, the Subgrantee shall

immediately submit to the City an executed original of the *Letter of Agreement Governing Use of Historic Site* showing the date and document numbers of record, or a duly certified copy of the file original. Through the *Letter of agreement*, the Subgrantee or its successors and assigns shall assume responsibility to maintain the historic property in a satisfactory manner for 20 years after the Project is completed.

- D. The Subgrantee shall hold the City, The Society and the State of Minnesota harmless from any loss, damage, or expense including reasonable attorney's fees and other costs of defense, arising as the result of any claim, action, complaint, proceeding, or litigation of any kind whatsoever, directly or indirectly brought about as a result of the funded project.
- E. The Subgrantee agrees that in hiring of common or skilled labor for the performance of any work on the grant project that no contractor, material supplier or vendor shall, by reason of race creed, color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age, discriminate against any person or persons who are citizens of the United States, or resident aliens, who are qualified and available to perform the work to which the employment relates.
- F. This Subgrant Agreement may be canceled or terminated by the City, and all money due, or to become due hereunder may be forfeited for a second or any subsequent violation of the terms of this section.

The Sub-grantee agrees no contractor, material supplier or vendor shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in the preceding paragraph, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

- G. The Subgrantee assures that no part of the Approved Project Budget shall be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a member of the Minnesota Legislature, to favor or oppose, by vote or otherwise, any legislation or appropriation by the Legislature, to favor or oppose, by vote or otherwise, any legislation or appropriation by the Legislature, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation. This shall not prevent communicating to members of the Minnesota Legislature on the request of any member or to the Legislature, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.
- H. The Subgrantee agrees to post a sign in a prominent location while Project work is in progress substantially incorporating the following acknowledgment:
"This project has been financed in part with funds provided by the State of Minnesota from the Arts and Cultural Heritage Fund through the Minnesota Historical Society."

- I. The Subgrantee also agrees that any publicity releases, informational brochures, public reports, publications, and public information relating to approved projects must acknowledge funding assistance from the State of Minnesota from the Arts and Cultural Heritage Fund. Any written materials shall include the following:

“This project has been financed in part with funds provided by the State of Minnesota from the Arts and Cultural Heritage Fund through the Minnesota Historical Society.”

- J. The Subgrantee also agrees to keep the Property and the project in good condition and repair, in compliance with all applicable codes and requirements; to restore promptly and in good and workmanlike manner any part of the Property and the Project which may be damaged or destroyed; to pay all lawful taxes when due; to comply with all laws affecting said Property and the Project or requiring and alterations or improvements to be made thereon; not to commit or permit any waste thereof; and not to commit, suffer or permit any action thereon in violation of law.
- K. The Subgrantee shall not assign any right or interest in this Subgrant Agreement and shall not transfer any interests in the same without the prior written consent of the City's Manager of Community Development, provided, however, that claims for money due or to become due to the Subgrantee from the City under this Subgrant Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the City.
- L. The Subgrantee shall provide a certification that no contractor or material suppliers providing labor or materials for the project nor is any of its principals presently debarred, suspended, proposed for debarment. Declared ineligible or voluntarily excluded from participation from any covered transaction.
- M. The Subgrantee shall be responsible for furnishing to the Society and the City such statements, records, data and information as the Society or the City may require pertaining to matters covered by this Subgrant Agreement.

III. PROCEDURES FOR CONTRACTING SERVICES AND MATERIAL

- A. Any services and/or materials that are expected to cost \$20,000 or more must undergo a formal notice and bidding process. In addition, any services to be performed by such professional as architects, consultants, engineers, historical researchers, etc., that are expected to cost between \$7,500 to \$19,999 must be scooped out in writing and offered to a minimum of three (3) bidders. Evidence of the offering along with copies of the bids received must be included in the Subgrantee's final records for the Project.
- B. For purchases between \$500 and \$5,000, the Subgrantee must maintain financial records that verify the cost was competitively based on at least three verbal quotes. For purchased greater than \$5,000 and less than \$20,000, the Subgrantee must maintain financial records that verify the cost was competitively based on at least three written quotes submitted in response to written specifications.

- C. For contracting services, the Subgrantee will follow the requirements of Minn. Stat. Chap, 177,44-44 regarding wage rates and contracts and corresponding Rules 5200.1000 to 5200.1120.

IV. PAYMENT SCHEDULE

- A. Once the Subgrant Agreement and the Letter of Agreement have been fully executed the Subgrantee will be notified when Project work may begin.
- B. Subgrantee will receive reimbursement of Project costs up to the amount of \$168,525 upon completion of each of the following:
 - 1. Execution of Subgrant Agreement and Letter of Agreement;
 - 2. Submission and approval of repointing samples;
 - 3. Society/City Site visit/monitoring inspection
 - 4. Documentation of match in the amount of \$18,570;
 - 5. Work is satisfactorily completed; and
 - 6. Fiscal documentation and the Project completion report have been reviewed and accepted by the City and the Society.
- C. The parties hereto acknowledge that reimbursements to the Subgrantee under this Agreement are being provided through the Society pursuant to an appropriation from the Minnesota Legislature. In the event that the Minnesota Legislature or the Society reduce or eliminate the funding for the Statewide Historic and cultural Grants Program in any way whatsoever, or by action otherwise reduce, impair or eliminate in City's ability to perform its obligations under this Agreement, the City shall have the right, in the exercise of its sole and unfettered discretion, to reduce or eliminate the funding available to the Subgrantee under this Subgrant Agreement or to terminate or otherwise modify this Subgrant Agreement.

V. FINANCIAL DOCUMENTATION AND FINAL REPORTING

- A. The Subgrantee shall submit all financial documentation for Project expenditures and a completed Project Activity Report with photographs documenting project work on or before May 1,2013. (Work on the Project must be concluded by April 30, 2013).
- B. The financial documentation for Project costs shall include acceptable types of documentation such as (1)copies of invoices/receipts, (2) copies of Project personnel time-sheets (if allocable), (3) copies of in-kind and/or donated services timesheets (if applicable), (4) copies of donated materials forms.
- C. The financial documentation shall be submitted to the City of Duluth, Community

VI. AUDIT

- A. The Subgrantee must maintain records and accounts consistent with generally accepted Accounting principles, and to provide for such fiscal control as is necessary to assure the proper disbursing of and accounting for grant funds. The Subgrantee shall maintain records and accounts for this project on file for a minimum of six (6) years after approval of the Final Report.
- B. The Subgrantee agrees to maintain records to document any matching funds claimed as part of the Project. The Subgrantee further agrees to secure reasonable written proof of the value of Staff or Volunteer Labor, and for Donated materials contributed to the project.
- C. The Subgrantee agrees that accounts and supporting documents relating to project expenditures will be adequate to permit an accurate and expeditious audit. An audit may be made at any time by the SOCIETY, its designated representatives, or any applicable agency of the state of Minnesota.

VII. INDEPENDENT CONTRACTOR AND INDEMNITY

- A. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting the Subgrantee or any of its officers, agents, servants and employees as an officer, agent, servant, representative or employee of the City for any purpose or in any manner whatsoever. The Subgrantee's officers, agents, servants and employees shall not be considered employees of the City, and any and all claims which may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of said officers, agents, servants and employees while engaged in performing any work under this Subgrant Agreement, and any and all claims whatsoever on behalf of said officers, agents, servants and employees arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of the City. The Subgrantee's officers, agents, servants, and employees shall not be entitled to any compensation or right or benefits of any kind whatsoever for leave or vacation pay. Worker's Compensation, Unemployment Insurance, disability pay or severance pay.
- B. The Subgrantee agrees to defend, indemnify and save harmless the City, the Society and their officers, agents, servants and employees from any all claims including claims for contribution or indemnity, actions, demands, suits, expense, losses, judgments, costs, expenses and damages, direct and indirect, incidental and consequential, including but not limited to attorneys' fees or other costs of defense, asserted by any person(s) including agents or employees of the City, The Society or the Subgrantee, by reason of the death of or injury to person or persons or the loss of or damage to property or any cause of action or claim, complaint, proceeding or litigation of any kind whatsoever, directly or indirectly arising out of the use of the Project or the property, or as a result of the Project, or the arising out of or resulting from any actual or alleged act or omission of the Subgrantee, its officers, agents, servants or employees in connection with or relating to the performance of its

obligations under this Agreement. On ten (10) days' written notice from City, the Subgrantee shall appear and defend all lawsuits against the City and/or the Society growing out of such injuries or damages.

VIII. INSURANCE

The Subgrantee shall provide for purchase and maintenance of such insurance as will protect the Subgrantee and the City against risk of loss or damage to the Project and any other property permanently located or exclusively used on the Property and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverage's shall include but shall not necessarily be limited to the following:

A. Insurance During Construction.

Sub grantee, prior entering on the Property for the 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. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, XCU exclusion removed, in limits of not less than \$1,500,000 per occurrence for personal injury, bodily injury and death, and limits of \$1,500,000 for property damage liability. If per person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverage's. Contractor shall also require such liability coverage of his subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverage's shall include:

- a. Contractors public-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; and
Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employees liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance

The Sub grantee shall procure and continuously maintain for 20 years after the Project Completion Date, 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 Sub grantee's ownership of, occupancy of or use of the Property and the Project, carried in the name of the Sub grantee, any subtenant and the City, to the extent it has an insurable interest as their respective interests may appear, as follows:

1. Property Insurance

The Project and the 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 \$10,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinary insured against in the region. The Sub grantee hereby waives any and all claims or causes of action against the City 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.

2. Liability Insurance

The Sub grantee shall procure and maintain continuously in force Public Liability insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than \$1,500,000 per occurrence for personal bodily injury and death, and limits of \$1,500,000 for property damage liability. If person limits are specified, they be for not less than \$1,500,000 per person and be for the same coverage's. The City is named as an additional insured therein. Insurance shall cover:

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

C. 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 states of the United States and licensed to do business in Minnesota.

D. Proof of Insurance

Proof of said insurance shall be provided to the City upon commencement of this Agreement. Such policy of insurance shall be approved by the City Attorney and shall contain a provision that thirty (30) days' advance notice in writing shall be given to the City prior to termination, cancellation or modification of such insurance. In the event that an "Accord" form of certificate is used, the words "endeavor to" shall be stricken from the notice provisions thereof. Current ISO additional insured's endorsement CG2010 is not acceptable. If the ISO 2010 is used, it must be a pre-2004 edition.

E. Reconstruction Obligation and Uninsured Loss

In the event the Project or any portion thereof is destroyed by fire or other casualty, the Sub grantee 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, the Sub grantee shall apply the proceeds of any insurance received by the Sub grantee to the payment or reimbursement of the costs thereof. The Sub grantee shall, however, complete the repair, reconstruction and

restoration of the improvements whether or not the proceeds of any insurance received by the Sub grantee are sufficient to pay for such repair, restoration, and reconstruction or repay all grant monies received.

IX. AMENDMENTS AND CANCELLATIONS

A. Amendments

Any significant variations from proposed work, costs, and/or time frames described in this Sub grant Agreement which are experienced or anticipated during the course of the Project and any significant problems, delays, or adverse conditions which materially affect planned performance shall be submitted in writing to the City of Duluth. Community Development Division at the address set forth herein.

The City will respond in writing, either approving or not approving the changes, and may amend the agreement if deemed necessary. Variations which are not known until the conclusion of the Project may be submitted with the Financial Documentation; however, the Sub grantee understands that costs may be disallowed if changes are not approved. Any amendments 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.

B. Cancellation

The City reserves the right of termination for cause on a fifteen (15) days' notice should it be determined that the Sub grantee has failed to comply with the terms and conditions of the Sub grant Agreement. This Sub grant Agreement may also be terminated in the event the City and Society find that the Project will not produce beneficial results commensurate with further expenditure of funds or because of circumstances beyond the control of the City, the Society and/or the Sub grantee. In the event of termination, the City may exert any Or all of the following remedies.

1. The City may refrain from disbursing the proceeds of the Grant.
2. In the event the Finance Commissioner, as a third party beneficiary of this Agreement, demands that all of the proceeds of the Grant already disbursed to the Sub grantee be returned to the Finance Commissioner, upon such demand the Sub grantee shall return such proceeds to the City.
3. The city may exert any additional remedies it may have in law or equity.

X. ENTIRE AGREEMENT AND AUTHORITY TO EXECUTE

- A. This Sub grant Agreement, including all exhibits and documents incorporated by reference, constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

B. The Sub grantee represents to the City that the execution of this Sub grant Agreement has been duly and fully authorized by its governing body or board, that the officers of the Sub grantee who executed this Agreement on its behalf are fully authorized to do so, and that this Sub grant Agreement when thus executed by said officers of the Sub grantee on its behalf will constitute and be the binding obligation and agreement of the Sub grantee accordance with the terms and conditions hereof.

I have read the above Sub grant Agreement and agree to abide by all of its provisions. Upon execution, this Agreement controls all activities during the Project thereby.

IN WITNESS WHEREOF, the parties have caused this Sub grant Agreement to be duly executed on the date (s) indicated below intending to be bound thereby.

CITY OF DULUTH

SACRED HEART MUSIC CENTER

By _____
Mayor

By _____
its _____

Federal Employer Identification Number

ATTEST:

City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney