PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0315R

RESOLUTION AUTHORIZING A SUBLEASE AGREEMENT WITH MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT FOR SUBLEASE OF SPACE IN THE DULUTH ATHLETIC CLUB BUILDING FOR THE JOINT WORKFORCE CENTER.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into a sublease agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____ with the state of Minnesota, department of administration, acting on behalf of the Minnesota department of employment and economic development for the subleasing of space in the Duluth Athletic Club building at 402 West First Street in Duluth, Minnesota for the joint workforce center, sublease payment to be deposited in Fund 268-031-6251-4622 (Workforce Development Fund, Grants Division, Office Support, Rent of Building).

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

WFD/ATTY REA:SLW:le 06/14/2012

STATEMENT OF PURPOSE: This resolution authorizes the city to enter into a sublease with state of Minnesota, department of administration, acting on behalf of the Minnesota department of employment and economic development (DEED) for the

operation of its workforce center functions. This sublease is a replacement for the form approved by council in 2011 pursuant to Resolution No. 11-0606; the changes were required to fit into the parameters of the department of administration.

The space subleased to DEED will replace space presently occupied by them in the government services center which the county is requiring the DEED to vacate. The agreement is for a 10-year period but does allow for adjustments in space utilization and rent as the needs of the parties change as well as providing the state with certain mandated "out" provisions.

The city will, under separate agreements, sublease various portions of the building the other workforce agency partners (Arrowhead Economic Opportunity Agency and Northeast Minnesota Office of Job Training) for their separate workforce center functions. Each of the agreements allow for all of the parties to jointly use portions of the property such as reception areas, interview rooms, rest room facilities and equipment areas and will also allow the parties to share use of and the cost of some equipment like printers and copiers. Under the terms of each agreement, each party will be responsible to pay for their separately controlled space and will also pay their proportionate share of the cost of jointly used facilities.

STATE OF MINNESOTA

SUBLEASE

NO. **11879-S**

THIS SUBLEASE is made by and between City of Duluth, hereinafter referred to as SUBLESSOR, and the State of Minnesota, Department of Administration, hereinafter referred to as SUBLESSEE, acting for the benefit of the Department of Employment and Economic Development ("DEED").

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

WHEREAS, SUBLESSOR has leased the leased premises("Workforce Center") located in the Property and Building known as the Duluth Athletic Club Building located at 402 West First Street in Duluth, Minnesota ("Building") from its owner, A & L Partnership LLP ("Master Lease"), a copy of which is attached as Exhibit A; and

WHEREAS, SUBLESSOR, along with SUBLESSEE and the hereinafter defined Agencies, are providers of various kinds of work assistance services in the Duluth-Superior area; and

WHEREAS, SUBLESSOR, SUBLESSEE and Agencies are desirous of creating a "Workforce Center" wherein SUBLESSOR, SUBLESSEE and Agencies can better offer their combined services to their clientele in more coordinated and comprehensive manner from a single location; and

WHEREAS, SUBLESSEE is desirous of leasing a portion of the Leased Premises from SUBLESSOR for the purpose of establishing and operating, in conjunction with SUBLESSOR and Agencies, such a Workforce Center; and

WHEREAS, SUBLESSOR is desirous of subleasing such space to SUBLESSEE under the terms and conditions of this Agreement.

WHEREAS, SUBLESSEE is bound by the terms and conditions of this Sublease only;

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

1. **SUBLEASED PREMISES** SUBLESSOR grants and SUBLESSEE accepts the sublease of the following described Subleased Premises located in the City of Duluth, County of St. Louis, Minnesota 55802:

approximately twelve thousand fourteen (12,014) usable square feet of space comprised of both dedicated and shared space, as shown on the Cost Allocation Plan (CAP), attached hereto as Exhibit B, and Floor Plans and Specifications attached as Exhibit C, in the building known as Duluth Athletic Club ("Building") located at 402 West First Street.

2. **USE** SUBLESSEE shall use and occupy the Subleased Premises only as office space and related activities.

3. **SUBLEASE TERM** The term of this Sublease is ten (10) years, commencing August 1, 2012 and continuing through July 31, 2012 ("Sublease Term").

4. **RENT**

4.1 In consideration for all covenants, representations and conditions of the Sublease, SUBLESSEE agrees to pay SUBLESSOR rent for the Sublease Term in the sum of one million seven hundred forty-one thousand four hundred twenty-nine and 08/100 dollars ($1,741,429.08) in accordance with the rent schedule set forth below:

SUBLEASE PERIOD			SQUARE FEET	RATE PER SQ. FT.	JANIT. SERVICES	TOTAL RATE PER SQ FT	MONTHLY PAYMENT	RENT FOR SUBLEASE PERIOD
8/1/12	-	7/31/15	12,014	$ 12.90	$ 0.85	$ 13.75	$13,766.04	$ 495,577.44
8/1/15	-	7/31/16	12,014	$ 13.15	$ 0.85	$ 14.00	$14,016.33	$ 168,195.96
8/1/16	-	7/31/17	12,014	$ 13.40	$ 0.85	$ 14.25	$14,266.63	$ 171,199.56
8/1/17	-	7/31/20	12,014	$ 14.05	$ 0.85	$ 14.90	$14,917.38	$ 537,025.68
8/1/20	-	7/31/21	12,014	$ 14.35	$ 0.85	$ 15.20	$15,217.73	$ 182,612.76
8/1/21	-	7/31/22	12,014	$ 14.70	$ 0.85	$ 15.55	$15,568.14	$ 186,817.68
							TOTAL	$ 1,741,429.08

4.2 Rent Billing Address SUBLESSOR shall mail or personally deliver original bills and rent statements to SUBLESSEE at the following address:

Fiscal Management Division
Department of Employment and Economic Development
1st National Bank Building
332 Minnesota St #E200
St Paul MN 55101-1351

4.3 Rent Payment Address SUBLESSEE shall mail or deliver the monthly rent set forth above at the end of the applicable calendar month to SUBLESSOR at the following address:

City of Duluth
Room 402, City Hall
411 West First Street
Duluth MN 55802
Attn: Director of Business & Community Development

4.4 SUBLESSOR represents and warrants that it is solely entitled to all rents payable under the terms of this Sublease.

5. CHANGE IN SQUARE FOOTAGE

5.1 Cost Allocation Plan

a. Cost Allocation Plan (CAP) shall mean the plan, developed and approved for the allocation of rent between SUBLESSOR, SUBLESSEE and other partners in the Workforce Center.

b. SUBLESSOR and SUBLESSEE hereby agree that the CAP meets the requirements of the DEED CAP Policy, attached hereto as Exhibit D, as modified by the DEED'S Policy Question Memo: Allocation Shared Space Methodology from Rick Roy, Workforce Systems Coordination Director, dated 1/17/12, attached hereto as Exhibit E.

c. Change in Square Footage Based on CAP In the event there is a change in square footage of the Subleased Premises with a corresponding change in the rent payable hereunder, SUBLESSOR and SUBLESSEE agree that this change may be made by an executed CAP documenting such change with copies sent to all parties hereto.

5.2 Reduction of Square Footage During the Term of the Agreement, upon sixty (60) days prior notice to SUBLESSOR, Subtenant shall have the right to delete from the Subleased Premises any portion thereof which the Subtenant deems to be superfluous to its needs ("Reduced Space"). Subtenant agrees that the Reduced Space, to the extent reasonably practical, constitute a space which is reasonably rentable to a third party tenant and that such Reduced Space shall have direct access to one or more of the common areas of the Building in a manner which will provide reasonable ingress and egress to and from the deleted portion and reasonable access to restroom facilities that will serve male and female employees. Both the Reduced Space and the remainder of the Subleased Premises shall be provided with code-compliant egress

from the Building. SUBLESSEE shall surrender the Reduced Space in accordance with Clause 7 below.

6. **TERMINATION**

6.1 Funding In the event that the Minnesota State Legislature does not appropriate to the Department of Employment and Economic Development funds necessary for the continuation of this Sublease, or in the event that Federal Funds necessary for the continuation of this Sublease are withheld for any reason, this Sublease may be terminated by SUBLESSEE upon giving thirty (30) days prior written notice to SUBLESSOR.

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

7. **SURRENDER OF SUBLEASED PREMISES** SUBLESSOR and SUBLESSEE hereby agree that at the expiration or earlier termination of this Sublease 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"), shall remain the property of SUBLESSEE. SUBLESSEE shall remove its Personal Property, vacate and surrender possession of the Subleased Premises to SUBLESSOR in as good condition as when SUBLESSEE 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 Subleased Premises, whether paid for by SUBLESSOR or SUBLESSEE, 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 Subleased Premises, shall remain the property of SUBLESSOR, and shall be surrendered with the Subleased Premises as a part thereof with no further responsibility or obligation for removal by SUBLESSEE, unless SUBLESSOR has granted prior approval upon SUBLESSEE'S request to remove such alterations, additions or improvements.

8. **REMODELING OF THE LEASED PREMISES**

8.1 Remodeling Plans SUBLESSOR shall, at its expense, provide labor and materials for remodeling of the Leased Premises as shown on the Floor Plans and Specifications attached hereto as Exhibit C, and by reference incorporated as if fully set forth herein.

8.2 As-Built Drawings Upon completion of the remodeling to the leased premises, SUBLESSOR shall, at its expense, provide SUBLESSEE with a hard copy of 'As-Built" plans and in AutoCAD 2008 or earlier format, of the leased premises following the American Institute of Architects (AIA) layering system.

9. **SUBLESSEE'S ALTERATIONS**

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

a. Upon SUBLESSEE'S request, SUBLESSOR shall provide SUBLESSEE up to three (3) written cost estimates from SUBLESSOR'S vendors for desired Alterations. SUBLESSOR or SUBLESSOR'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 SUBLESSEE in SUBLESSEE'S signed Purchase Order which shall be submitted to SUBLESSOR.

(ii) Alterations totaling $1,000.01 through $5,000.00 shall be set forth in and authorized by SUBLESSEE in a signed Remodeling Request Memo, which shall be submitted to SUBLESSOR.

(iii) Alterations of $5,000.01 or more shall be set forth and authorized by SUBLESSOR and SUBLESSEE by way of an executed Amendment to the Sublease.

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

10. **DUTIES OF SUBLESSOR** SUBLESSOR shall, at its expense, provide the following:

10.1 Management

a. SUBLESSOR agrees that in exercising its management responsibilities of the property of which the Subleased 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. SUBLESSOR 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 Subleased Premises.

10.2 Utilities SUBLESSOR shall bear the cost of heat, electricity, air conditioning, gas, sewer and water.

10.3 Electrical Service SUBLESSOR shall provide adequate electrical service to the Subleased Premises to accommodate SUBLESSEE'S needs and the Building of which the Subleased Premises is a part.

10.4 Heating and Cooling

a. The Subleased Premises shall be served by heating and cooling facilities of a sufficient design capacity to maintain the Subleased Premises within the acceptable range of temperatures identified below under all but the most extreme weather conditions, assuming optimal use by SUBLESSEE of thermostats and other climate control devices such as the opening or closing of blinds, doors and vents within the Subleased Premises. SUBLESSOR shall provide SUBLESSEE with written instructions defining said optimal use.

b. For purposes hereof, the acceptable space temperature settings for various Subleased space are as follows:

(i) Heating temperatures will be set at the following maximum temperatures:

- 68°F to 70°F for all occupied areas and cafeterias with the goal of maintaining the space temperature within the range of 70°F to 74°F during working hours.
- 65°F to 67°F for all lobby, corridor and restroom areas.
- 60°F to 62°F for all building entrances, storage areas and tunnels.
- Temperature settings for all the above referenced spaces must be lowered to 60°F to 62°F during non-working hours.
- 55°F for all unoccupied spaces.

- 55°F for all vacated spaces.

(ii) Cooling temperatures will be set at the following minimum temperatures:

- 76°F to 78°F for all occupied space excluding re-heat systems with the goal of maintaining the space temperature less than 78°F during working hours.

- Temperature settings for all the above referenced spaces will be increased to 85°F during non-working hours.

(iii) Computer rooms, research facilities and special care facilities are exempted from these requirements. Additional building spaces may be exempted from all or part of these requirements, pursuant to the approval of the Commissioner of Administration.

10.5 Relative Humidity SUBLESSOR warrants that the Subleased Premises is served by heating, cooling and other facilities of a design capacity sufficient to maintain the Subleased Premises within the range of 20% - 60% relative humidity, assuming optimal use of the thermostats and other climate control devices, such as the opening or closing of blinds, doors and vents within the Subleased Premises.

10.6 Ventilation and Environmental Quality

a. SUBLESSOR shall provide outdoor fresh air per minute per person to the Subleased Premises as outlined in Table 2 of ASHRAE (American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc.) Standard 62.1-2007, or as amended. An air cleaning device shall be used in the ventilation system which filters the outdoor air and shall have:

(i) A minimum filtration efficiency of thirty (30) percent as rated by ASHRAE 52.1-1992, or as amended, Atmospheric Dust Spot Efficiency Rating; **OR**

(ii) A minimum Efficiency Reporting Value (MERV) 8 as rated by ASHRAE 52.2-1999, or as amended, Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size.

If air filters are used, SUBLESSOR shall change the filters at least three (3) times per year, preferably in March, July and November, or more often as required.

b. Any secondary filtration systems (such as in heat pumps) shall have a minimum weight arrestance of eighty (80) percent as rated by ASHRAE 52.1-1992, or as amended, Weight Arrestance Method or Minimum Efficiency Reporting Value (MERV) 5 as rated by ASHRAE 52.2-1999, or as amended, Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size.

If air filters are used, SUBLESSOR shall change the filters at least two (2) times per year or more often as required.

c. It is understood by SUBLESSOR and SUBLESSEE that no wall covering will be installed around pipe chases.

d. SUBLESSOR shall, at its expense, remove and replace any building material with visible or detected evidence of water infiltration or mold growth.

10.7 Lighting

a. SUBLESSOR shall provide the Subleased Premises with overhead lighting within the range of 20 to 50 foot-candle power at 30" above finished floor (AFF).

b. SUBLESSOR shall re-lamp light fixtures and replace light ballasts as needed.

10.8 Restrooms SUBLESSOR shall provide the Subleased Premises with separate restroom facilities for men and women. Such facilities shall be situated within the Subleased Premises or be easily accessible therefrom. Ventilation for restrooms must be in accordance with applicable building codes.

10.9 Janitorial Service SUBLESSOR shall provide janitorial services and supplies to the Subleased Premises and common areas of the Building in accordance with the janitorial schedule set forth in the attached Exhibit A (Master Lease).

10.10 Exterior Window Cleaning SUBLESSOR shall, at its expense, semi-annually wash the inside and outside of exterior windows of the Building, including ledges and sills.

10.11 Trash and Recycling Services

a. Trash Removal SUBLESSOR shall, at its expense, provide trash disposal services.

b. Recycling Services

(i) Pursuant to Minn. Stat. §16B.24, subd. 6(d), SUBLESSOR shall provide space for recyclable materials.

(ii) SUBLESSOR shall provide recycling services, including, but not limited to, the following:

(a) Provide all recycling containers, either individual containers at each workstation/office and/or centralized containers throughout the Subleased Premises;

(b) Recycle glass, paper, plastic, aluminum cans, mixed paper, cardboard; and

(c) Empty the centralized recycling containers and return of the recycling containers to the Subleased Premises.

(iii) SUBLESSOR and SUBLESSEE agree that the costs of said recycling services shall be included in the CAP.

10.12 Fire Safety SUBLESSOR shall, at its expense, provide and maintain all fire extinguishers, fire alarms and fire detection systems for the Subleased Premises and Building as required by applicable codes/ordinances and /or the state fire marshal.

10.13 Common Areas SUBLESSOR shall provide sufficient light, heat and maintenance to the common and public access areas of the Building and the Subleased Premises, including stairways, elevators, lobbies and hallways so that such areas shall be safe and reasonably comfortable.

10.14 Snow Removal SUBLESSOR 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 or wind conditions make this impossible. If the snow and ice removal is not completed by 6:30 a.m., SUBLESSOR will make every effort to complete the snow removal as soon as possible.

10.15 General Maintenance and Repairs

a. SUBLESSOR shall, at its expense, maintain in working condition and good repair all appurtenances within the scope of this Sublease, including, but not limited to: plumbing, wiring, electrical, heating (and, if applicable, cooling) devices, ductwork and any improvements or equipment added to the Subleased Premises, whether or not the improvement or equipment was paid for by SUBLESSEE.

b. SUBLESSOR shall not be responsible for repairs upon implements or articles which are the personal property of SUBLESSEE, nor shall SUBLESSOR bear the expense of repairs to the Subleased Premises necessitated by damage caused by SUBLESSEE beyond normal wear and tear.

10.16 Heating, Ventilation and Air Conditioning (HVAC) Maintenance

a. SUBLESSOR shall, at its expense, maintain and make such necessary repairs to HVAC equipment, whether or not the HVAC equipment was paid for by SUBLESSEE.

b. SUBLESSOR shall document maintenance on the heating, ventilating and air conditioning system (e.g., filter changes and cleaning methods and procedures).

c. Air Conditioning Cooling Equipment Maintenance:

(i) Primary fresh air cooling system All interior surfaces of the ductwork within five (5) feet downstream and five (5) feet upstream of the cooling coils, the cooling coils and its drainage systems shall be cleaned with a coil cleaning solution. The cleaning shall be performed in March or April and in September or October of each year. If fiberglass interior liners are located within five (5) feet upstream and downstream of the cooling coils, SUBLESSOR shall either remove the fiberglass liner down to bare metal or cover it with non-permeable material such as galvanized metal.

(ii) Secondary cooling system, such as heat pumps All interior surfaces of the ductwork within two (2) feet downstream of the cooling coils, the cooling coils and its drainage systems shall be cleaned with a coil cleaning solution. The cleaning shall be performed at least once in every two (2) year period. If fiberglass interior liners are located within two (2) feet downstream of the cooling coils, SUBLESSOR shall either remove the fiberglass liner down to bare metal or cover it with non-permeable material such as galvanized metal.

10.17 Delivery of Subleased Premises SUBLESSOR covenants that it will deliver the Subleased Premises to SUBLESSEE in a clean and sanitary condition with all services and appurtenances included within the scope of this Sublease in effect and in good running order.

10.18 Quiet Enjoyment SUBLESSEE shall have the quiet enjoyment of the Subleased Premises during the full Sublease Term and any extension thereof.

10.19 Taxes and Assessments SUBLESSOR shall be responsible for payment of all taxes and assessments upon the Building and land of which the Subleased Premises is a part.

10.20 Exterior Lighting SUBLESSOR shall provide adequate exterior lighting in the building entrance/exits.

10.21 Disability Access Guidelines SUBLESSOR agrees to provide and maintain the Subleased Premises and the Building of which the Subleased 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.

10.22 Energy Conservation In the event energy conservation measures are enacted by any State or Federal authority, it is hereby agreed that SUBLESSOR 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.

10.23 Pest Control SUBLESSOR shall provide pest control for the Subleased Premises and the Building of which the Subleased Premises is a part.

11. DUTIES OF SUBLESSEE

11.1 SUBLESSEE shall allow access to the Subleased Premises by SUBLESSOR or its authorized representatives at any reasonable time during the Sublease Term for any purpose within the scope of this Sublease.

11.2 SUBLESSEE shall not use the Subleased Premises at any time for any purpose forbidden by law.

11.3 Assignment/Sublease SUBLESSEE shall not assign, sublet or otherwise transfer its interest in this Sublease without the prior written consent of SUBLESSOR.

11.4 SUBLESSEE shall observe reasonable precautions to prevent waste of heat, electricity, water, air conditioning and any other utility or service, whether such is furnished by SUBLESSOR or obtained and paid for by SUBLESSEE.

11.5 Workforce Center CAP Committee ("CAP Committee")

a. SUBLESSEE agrees to appoint a representative to participate in the CAP Committee to assist SUBLESSOR in administering and operating the Workforce Center and to participate in the development of the CAP. SUBLESSOR and SUBLESSEE shall each have a representative on the CAP Committee and any representative may bring a matter to the CAP Committee related to the administration and operation of the Workforce Center.

b. The purpose of the CAP Committee is to seek to develop consensus on all such issues, but, except as otherwise required by the DEED CAP Policies (Exhibit D) or by this Sublease, SUBLESSOR shall have discretion to administer and operate the Workforce Center in the manner it deems appropriate.

12. INSURANCE

12.1 Property Damage It shall be the duty of SUBLESSOR and SUBLESSEE to maintain insurance or self-insurance on their own property, both real and personal. Notwithstanding anything apparently to the contrary in this Sublease, SUBLESSOR and SUBLESSEE 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.

12.2 Liability SUBLESSOR and SUBLESSEE 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. SUBLESSEE'S liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. §3.736, and other applicable law. SUBLESSOR'S liability shall be governed by the provisions of the Minn. Stat. §466.04, and other applicable law

13. **BUILDING ACCESS AND SERVICES** SUBLESSEE shall have access to the Building seven (7) days per week, twenty four (24) hours per day, but the access of individual employees shall be determined by a building access policy to be mutually agreed upon between SUBLESSOR and SUBLESSEE.

14. **DEFAULT**

14.1 By SUBLESSOR If SUBLESSOR shall default in the performance of any of the terms or provisions of this Sublease, SUBLESSEE shall promptly so notify SUBLESSOR in writing. If SUBLESSOR 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 SUBLESSOR 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, SUBLESSEE, at its sole option, may terminate this Sublease upon thirty (30) days prior written notice, or may cure such default. In the event SUBLESSEE cures the default, SUBLESSOR shall pay all reasonable and actual expenses paid by SUBLESSEE to cure said default, including attorneys fees, within ten (10) days of receipt of invoices therefore rendered, or SUBLESSEE shall have a specific right to set off any such amounts due from SUBLESSOR against any rent payments or other amounts due under this Sublease. In the event SUBLESSEE elects to terminate this Sublease, said termination shall not limit SUBLESSEE'S rights to damages caused by the breach and failure to cure. This provision in no way limits SUBLESSEE'S other remedies for breach under common law or this Sublease.

14.2 By SUBLESSEE In the event of any failure of SUBLESSEE to perform any of the terms, conditions or covenants of this Sublease to be observed or performed by SUBLESSEE for more than thirty (30) days after written notice of such default has been given to SUBLESSEE, SUBLESSOR shall have the right, at its option, to terminate this Sublease. Upon such termination SUBLESSEE shall quit and surrender the Subleased Premises to SUBLESSOR. Upon such termination, SUBLESSOR or SUBLESSOR'S agent may reenter the Subleased Premises and remove all or any persons therefrom by proceeding at law and thereby repossess and enjoy the Leased Premises; and by such repossession and reentry, SUBLESSOR shall not be deemed to have waived its right (if

any) to collect rent due (if any) from SUBLESSEE hereunder or to enforce the other obligations of SUBLESSEE hereunder.

15. **AUDIT** Pursuant to Minn. Stat. §16C.05, subd. 5, the books, records, documents and accounting procedures and practices of SUBLESSOR relevant to this Sublease shall be subject to examination by the State and/or Legislative Auditor, as appropriate, for a minimum of six (6) years.

16. **AFFIRMATIVE ACTION**

16.1 If the Sublease amount exceeds $100,000 and the SUBLESSOR 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 SUBLESSOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. Rules Parts 5000.3400-5000.3600. A SUBLESSOR 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.

16.2 Minn. Stat. § 363A.36 Minn. Stat. § 363A.36 requires the SUBLESSOR 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.

16.3 Minnesota Rule 5000.3550 - Disabled Individuals Affirmative Action Clause

a. SUBLESSOR 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. SUBLESSOR 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. SUBLESSOR 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 SUBLESSOR'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. SUBLESSOR 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 SUBLESSOR'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. SUBLESSOR shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that SUBLESSOR 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.

17. **SMOKING** Pursuant to Minn. Stat. §16B.24, subd. 9, SUBLESSOR and SUBLESSEE shall not permit smoking in the Subleased Premises.

18. **SIGNAGE**

18.1 SUBLESSEE shall not post nor permit any signs to be placed in the Subleased Premises that are visible from the exterior of the Building, through the windows or visible from the halls or other common areas of the Building, unless prior written approval for said signs has been secured from SUBLESSOR.

18.2 Building directories, room numbers, identification and directional signs shall be provided to the section level as it relates to SUBLESSEE'S organization. Said signage shall be provided and installed at SUBLESSOR'S expense and shall be of a uniform design throughout the Building as mutually agreed upon by the parties.

19. **LAWS GOVERNING** This Sublease shall be construed and enforced in accordance with the laws of the State of Minnesota.

20. **GOVERNMENT DATA PRACTICES ACT COMPLIANCE**

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

20.2 Minnesota Statutes, Chapter 13, provides that all government data are public unless otherwise classified. If SUBLESSOR receives a request to release the data referred to in this Clause, SUBLESSOR must immediately notify SUBLESSEE and consult with SUBLESSEE as to how SUBLESSOR should respond to the request. SUBLESSOR'S

response shall comply with applicable law, including that the response is timely and, if SUBLESSOR denies access to the data, that SUBLESSOR'S response references the statutory basis upon which SUBLESSOR relied. SUBLESSOR does not have a duty to provide public data to the public if the public data is available from SUBLESSEE.

21. **NOTICES**

21.1 All notices or communications between SUBLESSOR and SUBLESSEE shall be in writing and deemed to have been given upon the occurrence of one of the following methods of delivery to the address noted in Clause 21.2 below.

a. when personally delivered to the addressee, or
b. on the second business day after sender has deposited the registered or certified mailing with the US Postal Service, or
c. one (1) business day after deposited with an overnight courier service.

21.2 Mailing Addresses:

SUBLESSOR:
City of Duluth
Room 402, City Hall
411 West First Street
Duluth MN 55802
Attn: Director of Business & Community Development

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

EXHIBITS:

Exhibit A	Master Lease
Exhibit B	Cost Allocation Plan
Exhibit C	Floor Plans and Specifications
Exhibit D	DEED CAP Policy
Exhibit E	DEED'S Policy Question Memo: Allocation Shared Space Methodology from Rick Roy, Workforce Systems Coordination Director, dated 1/17/12

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

SUBLESSOR:
CITY OF DULUTH, a Municipal Corporation
SUBLESSOR certifies that the appropriate person(s) have executed the Sublease on behalf of SUBLESSOR as required by applicable articles, bylaws, resolutions or ordinances.

By_____
Its Mayor

Date_____

Attest:
By_____
Its City Clerk

Date_____

Approved:
By_____
Assistant City Attorney

Date_____

Countersigned:
By_____
City Auditor

Date_____

SUBLESSEE:
STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
COMMISSIONER

By_____
Real Estate and Construction Services

Date_____

APPROVED:
STATE OF MINNESOTA
DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

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._____