

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0390R

RESOLUTION AUTHORIZING A CONTAMINATION CLEANUP PROGRAM
GRANT AGREEMENT WITH THE STATE OF MINNESOTA AND FURTHER
AUTHORIZING A SUB-RECIPIENT FUNDING AGREEMENT WITH
BLUMBERG-1831, LLC

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute a contamination cleanup program grant 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 acting through the Department of Employment and Economic Development ("DEED") in the amount of \$145,350 payable into Fund 255 (Economic Development), Agency 020 (Planning), Object 4220-02 (State of Minnesota Operating), related to the Blumberg-1831, LLC Project.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute a sub-recipient funding agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with Blumberg-1831, LLC ("Blumberg"), in the amount of \$145,350, payable from Fund

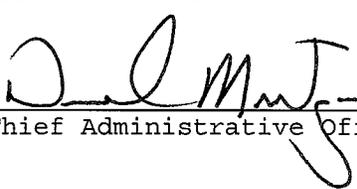
255 (Economic Development), Agency 020 (Planning), Object 5458 (Payment to Developer).

Approved:



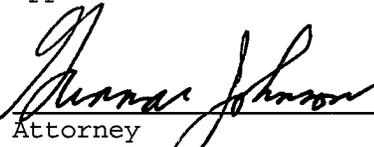
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

BD HTB/bel 08/03/2012

STATEMENT OF PURPOSE: On April 23, 2012, The Council adopted a resolution authorizing the May 1, 2012 grant application to DEED's contamination cleanup program for funds on behalf of the Blumberg project in the Chester Park neighborhood. The Mayor was notified in June of DEED's award in the amount of \$145,350.

This resolution authorizes the execution by the City of the grant agreement with DEED on behalf of the Blumberg project. It also authorizes a Sub-Recipient Funding Agreement between the City and Blumberg; this agreement lays out the conditions and requirements associated with the City's role as grant applicant and Blumberg's role as developer. Included in this agreement is the payment to the City of an administrative fee in the amount of \$4,360.50, to be paid by Blumberg upon execution of the agreement. Blumberg will also provide the local match required by the grant of no less than \$48,450.

**SUB-RECIPIENT FUNDING AGREEMENT
CONTAMINATION CLEANUP GRANT PROGRAM
BLUMBERG-1831, LLC PROJECT**

THIS AGREEMENT, is entered into by and between the CITY OF DULUTH, a Minnesota municipal corporation (the "City"), and Blumberg-1831, LLC, a Minnesota limited liability company (the "Grantee").

WHEREAS, in cooperation with Grantee, the City applied to and received approval for funds in the amount of \$ 145,300 from the State of Minnesota, acting by and through its Department of Employment and Economic Development, Business and Community Development Division ("DEED") under its Contamination Cleanup Grant Program (the "Cleanup Grant"); and

WHEREAS, the City desires to award proceeds of the Cleanup Grant in the amount of \$145,300 (the "Subgrant") to Grantee, to assist Grantee with the development of the site on the real property described on attached **Exhibit A** (the "Property").

WHEREAS, the Grantee will authorize \$48,450 in funds as the required local match under the Cleanup Grant (the "Match Funds").

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

1. **AWARD.** The City awards the Subgrant to Grantee for assessment and/or clean-up activities as are described in Grant Agreement No. _____ between the City and DEED attached to this Agreement as **Exhibit B** (the "Cleanup Grant Agreement") and the Application to DEED, submitted on May 1, 2012, on file in the City's Business Development Office, both of which are incorporated into this Agreement (the "Project"). In the event of a conflict between Grant Agreement, this Agreement and the Grant Application to DEED, the documents shall be deemed to be controlling in the following order: 1) Grant Agreement No. _____, 2) this Agreement, and 3) the Grant Application. The Subgrant and Match Funds must be used exclusively to pay or reimburse only expenses authorized under the Cleanup Grant Agreement. Administrative costs incurred by the Grantee are not eligible for reimbursement under this Agreement. Notwithstanding anything to the contrary, the Grantee understands and agrees that any reduction or termination of the Cleanup Grant will result in a like reduction or termination of the Subgrant, and that any material change in the timeline or scope of the Project in the Cleanup Grant Agreement must be approved in writing by the City and DEED.

2. **ADMINISTRATION FEE.** Upon the execution of this Agreement, Grantee shall pay to the City an administrative fee in the amount of \$ 4,360.50. Said fee shall be retained by the City in all cases.

3. **PERFORMANCE.** The Grantee must comply with all requirements applicable to the City in the Cleanup Grant Agreement. Grantee's default under the Cleanup Grant Agreement will constitute noncompliance with this Agreement. If the City finds that there has been a failure to comply with the provisions of this Agreement or that reasonable progress on the Project has not

been or will not be made, the City may take action to protect its interests, including refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed. If action to correct substandard performance is not taken by the Grantee within 30 calendar days, or such longer period specified by the City's Business Resources Manager (the "Manager") after written notice by the City, the City may terminate this Agreement.

4. **TIME OF PERFORMANCE.** Grantee must complete the Project and the Development on or before June 30, 2015. In order to ensure that all funds are drawn prior to the City's Cleanup Grant Agreement term end date, all payment requests must be received at least 45 days prior to said term end date. The City is not obligated to pay for any Project costs incurred thereafter.

5. **CONDITIONS PRECEDENT TO DISBURSEMENT.** The following requirements are conditions precedent to the City's disbursement of any of the Subgrant proceeds.

A. The Grantee must have provided evidence satisfactory to the Manager showing that Grantee has title in fee simple and site control of the Property.

B. The Grantee must have provided to the Manager such evidence of compliance with all of the provisions of this Agreement as the City may reasonably request.

6. **DISBURSEMENT.** It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$145,300 payable from Fund 255. The City will make disbursements only upon receipt of a written payment request in the form provided by DEED (the "Payment Request Form") from Grantee acceptable to the City and DEED. Payment requests may be made no more than once per month and must be accompanied by supporting invoices that relate to Project costs. The Payment Request Form must have attached all invoices from each provider to be paid or cost to be reimbursed. The City will, upon its approval of the Payment Request Form and supporting documentation, forward it to DEED for approval. Upon DEED approval of the Payment Request Form and receipt by the City of the approved amounts of Cleanup Grant funds, the City will disburse the approved amount of Subgrant funds in accordance with the information provided in the Payment Request Form.

7. **NOTICES.** Communication and details concerning this Agreement must be directed to the following Agreement representatives:

City: City of Duluth
Attn: Heidi Timm-Bijold
402 City Hall
411 W. 1st Street
Duluth, MN 55802
Telephone: (218) 730-5324

Grantee: Blumberg-1831, LLC
Attn: Carla Blumberg
Address: 1924 East 8th Street
Duluth, MN 55812
Telephone: 218-340-4476

8. **GENERAL CONDITIONS.**

A. **General Compliance.** The Grantee agrees to comply with all applicable federal, state and local laws and regulations governing the Project and Cleanup Grant funds provided under this Agreement, including without limitation all applicable OSHA regulations, especially the federal Hazardous Waste Operations and Emergency Response Standards (29 C.F.R. 1910.120 and 29 C.F.R. 1926.65) and when applicable all federal Davis Bacon and related act requirements.

B. **Subcontracts.**

1. *Compliance with Laws.* The Grantee must require that contractors performing work being paid with the Subgrant funds comply with all applicable federal, state and local laws and regulations governing the Project.

2. *OSHA.* Grantee must require that contractors performing work being paid with the Subgrant funds be in compliance with all applicable OSHA regulations, especially the Federal Hazardous Waste Operations and Emergency Response Standards (29 C.F.R. 1910.120 and 29 C.F.R. 1926.65).

C. **Termination.** In the event the Cleanup Grant Agreement is terminated, this Agreement shall contemporaneously terminate. Upon termination, Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

D. **Independent Contractor.** Nothing contained in this Agreement is intended to, or may be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Grantee will at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because the Grantee is an independent contractor.

E. **Indemnification and Hold Harmless.** The Grantee shall hold harmless, defend and indemnify the City and DEED from any and all liability, claims, actions, suits, charges, damages, losses, costs, expenses, and judgments whatsoever, including reasonable attorneys' fees, that arise directly or indirectly out of the Grantee's, its contractor's or subcontractor's performance or nonperformance under this Agreement. Claims included in this indemnification include any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B; the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended, United States Code Title 42, Sections 9601 et. seq.; and the Federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code Title 42, Sections 6901 et. seq.

F. **Insurance.**

1. *Insurance Required.* During the term of this Agreement, Grantee and its contractors and subcontractors rendering services being paid with funds from this Agreement shall procure and maintain Public Liability and Automobile Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$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 coverages. Coverages of Grantee and its contractors/subcontractors shall include:

- a. Public liability including premises and operations coverage;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnity provisions;
- f. Products—completed operations; and
- g. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement.

2. *Additional Insurance Requirements.* All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in Minnesota. City shall be named as an additional insured under the Public Liability and Automobile Liability Insurance. The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms: 1) ISO Additional Insured Endorsement (CG-1010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002), or equivalent as approved by City's attorney. City does not represent or guarantee that the types of limits or coverages provided above are adequate to protect Grantee's interests and liabilities.

3. *Certificates of Insurance.* Certificates showing that the above-described insurance is carried in the specified amounts shall be furnished to City prior to the disbursement of any of the Subgrant proceeds, and a certificate showing continued maintenance of such insurance shall be on file with City during the term of this Agreement. The form of each certificate of insurance shall contain an unconditional requirement that the insurer notify City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against City.

4. *Contractor/Subcontractor Evidence of Insurance.* The Grantee must not commence work until any and all contractors/subcontractors have obtained the required proof of insurance which clearly evidences required insurance coverages. If the Grantee fails to furnish proof of insurance coverages from the contractors/subcontractors when requested by the City, the City may withhold payments and/or pursue any other rights or remedy allowed under this Agreement, law, equity, and/or statute.

9. **ADMINISTRATIVE REQUIREMENTS.**

A. **Accounting Standards.** The Grantee agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this Agreement.

B. **Records.**

1. *Retention.* Audits and records, including but not limited to all financial and environmental documents related to the funds provided under this Agreement, shall be accessible to authorized representatives of the City for purposes of examination and audit. In addition, the Grantee shall give DEED, the Legislative Auditor, and the State Auditor's Office, through any authorized representatives, access to and the right to examine all records, books,

papers, and documents related to this Agreement for a minimum of six years from the end of the Cleanup Grant Agreement term end date.

2. *Close-Out.* The Grantee's obligation to the City does not end until all close-out requirements are completed. Activities during this close-out period include: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), determining the custodianship of records and resolving audit findings.

C. **Procurement.** The Grantee must maintain an inventory record of all nonexpendable personal property procured with funds provided under this Agreement. Program income is income generated from grant-funded activities, including interest earned on grant funds. All unexpended program income must revert to the City upon termination of this Agreement.

10. **MISCELLANEOUS.**

A. **Assignability.** The Grantee may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of the Manager; provided, however, that claims for money due or to become due to the Grantee from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer must be furnished promptly to the City.

B. **Antitrust.** The Grantee hereby assigns to the State of Minnesota any and all claims for overcharges for goods and/or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

C. **Governing Law and Venue.** This Agreement will be governed by, and construed in accordance with, the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

D. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all of which taken together constitute one and the same agreement.

E. **Severability.** In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

F. **Entire Agreement.** This Agreement, including Exhibits A and B, constitutes the entire Agreement between the City and Grantee and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto.

CITY OF DULUTH

ROHLFING OF DULUTH, INC.

By: _____
Mayor

By: _____
Its: _____

Date: _____

Date: _____

Attest:

City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A
Legal Description of the Property

Lots 9, 10, 11 and 12, Block 28, Highland Park Addition of Duluth

Exhibit B
Cleanup Grant Agreement

STATE OF MINNESOTA
DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
BUSINESS AND COMMUNITY DEVELOPMENT DIVISION

Contamination Cleanup Program Grant Agreement

CCGP-12-0005-Z-FY12

Blumberg-1831 Project

This Agreement is effective on the date of last signature and is between the State of Minnesota, acting through the Department of Employment and Economic Development (DEED), (hereinafter the Grantor), and the city of Duluth (hereinafter the Grantee).

The Grantor has been allocated funds by the Minnesota Legislature to make grants pursuant to Minn. Stat. § 116J.554. The Grantee has made application to the Grantor for a Contamination Cleanup Grant for the Blumberg-1831 Project (hereinafter the Project). That application is hereby incorporated into this agreement. Where provisions of the Grantee's application are inconsistent with provisions of this agreement, the provisions of this agreement shall take precedence.

In consideration of mutual promises set forth below, the parties agree as follows:

The Grantor shall grant to the Grantee the total sum of ONE HUNDRED FORTY-FIVE THOUSAND, THREE HUNDRED FIFTY DOLLARS (\$145,350). This grant is made pursuant to Minn. Stat. § 116J.554. Funds made available pursuant to this agreement shall be used only for "Project Costs," as defined in Minn. Stat. § 116J.552, subd. 7, and for purposes specified in the Special Conditions section of this agreement.

Grantee agrees to complete the Project in accordance with the approved budget and within the time frames specified in the Application and Agreement. Any material change in the scope of the Project, the budget or the completion date must be approved in writing by the Grantor. Notwithstanding all other provisions of this agreement, it is understood that any reduction or termination of state funds provided to the Grantor may result in a like reduction to the Grantee.

GENERAL CONDITIONS

Accounting

For all expenditures of funds made pursuant to this agreement, the Grantee shall keep financial records including properly executed contracts, invoices, and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures. Accounting methods shall be in accordance with generally accepted accounting principles.

Term

The Grantee shall perform and accomplish such purposes and activities specified herein during the period of **June 20, 2012 to June 30, 2015**. In order to ensure that all funds are drawn prior to the grant term end date, all payment requests must be received at least 30 days prior to the grant term end date.

Eligible Costs

Eligible costs include the costs identified in the Special Conditions section of this agreement that incurred during the contract period. Pursuant to Minn. Stat. § 116J.552, costs of implementing the response action plan (RAP) incurred before the grant award date may be eligible at the discretion of the Grantor, if the costs were completed after the RAP was approved by the Minnesota Pollution Control Agency and the RAP was approved within 180 days of the application deadline. Costs incurred for the development of a RAP incurred prior to grant award may be considered eligible at the discretion of the Grantor.

Payment/Disbursement Schedule

Grantor shall disburse funds to the Grantee pursuant to this agreement, based upon payment requests submitted by the Grantee and reviewed and approved by the Grantor. Payment requests must be accompanied by supporting invoices that relate to activities in the approved budget. The amount of grant funds requested by the Grantee cannot exceed 75% of the total approved cleanup costs incurred by the Grantee as supported by invoices. Payment request forms will be provided by the Grantor.

Reporting

Grantee shall submit to the Grantor annual reports on the use of funds and the progress of the Project covering July 1st through June 30th of each year. The reports must be received by DEED no later than July 25th of each year. The reports shall identify specific Project goals listed in the application and quantitatively and qualitatively measure the progress of such goals. Reporting forms will be provided by the Grantor.

Provisions for Contracts and Sub-grants

The Grantee shall include in any contract or sub-grant, in addition to provisions that define a sound and complete agreement, such provisions that require contractors and sub-grantees to comply with applicable state and federal laws.

Along with such provisions, the Grantee shall require that contractors performing work covered by this grant be in compliance with all applicable OSHA regulations, especially the federal Hazardous Waste Operations and Emergency Response Standards (29CFR 1910.120 and 29CFR 1926.65).

Program Income

Program income is income generated from grant-funded activities, including interest earned on grant funds. All program income on hand at the end of the grant period must be returned to the state unless a use of the income has been approved by the Grantor.

Termination and Cancellation

Termination by the State. The Grantor or the Commissioner of Administration may cancel this agreement at any time, with or without cause, upon 30 days written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

If the Grantor finds that there has been a failure to comply with the provisions of this agreement, that reasonable progress has not been made, or that the purposes for which the funds were granted have not been or will not be fulfilled, the Grantor may take action to protect the interests of the State of Minnesota, including refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed. If the Project is not started on or before December 31, 2013, or such a later date, requested by the Grantee and approved by the Grantor, in writing, then the Grantor's obligation to fund the Program Grant shall terminate.

Termination for Insufficient Funding. The Grantor may immediately terminate this agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The Grantor is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The Grantor will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The Grantor must provide the Grantee notice of the lack of funding within a reasonable time of the Grantor receiving that notice.

Affirmative Action

A Public Entity that receives State money for any reason is encouraged to prepare and implement an affirmative action plan for the employment of minority persons, women, and the disabled and submit the plan to the Commissioner of Human Rights.

Audit and Inspection

The Grantee shall maintain adequate financial records consistent with generally accepted accounting principles. The Grantee shall furnish the Grantor with an independent audit covering each grant year in which grant disbursements or expenditures were made; and prepared in compliance with generally recognized audit standards. The audit shall include a schedule of revenue and expenditures for the Project. The audit must be submitted within 30 days after the completion of the audit, but not later than one year after the end of the audit period. Alternatively, the Grantee shall submit accounting system records that track the use of grant

proceeds and all matching funds by eligible Project Costs for each year in which grant disbursement and expenditures were made. The records shall reflect both expenditures and revenues and shall be submitted after all grant proceeds and matching funds have been expended or at the Grantor's request.

Accounts and records, including, but not limited to all financial and environmental documents related to the funds provided under this agreement shall be accessible to authorized representatives of the Grantor for purposes of examination and audit. In addition, the Grantee will give the State of Minnesota, Department of Employment and Economic Development, the Legislative Auditor, and the State Auditor's Office, through any authorized representatives, access to and the right to examine all records, books, papers, and documents related to the grant, for a minimum of six years from the end of the term of this Grant Contract.

Liability

Subject to the provisions and limitations of Minnesota Statutes Chapter 466, Grantee agrees to indemnify and hold Grantor, its agents and employees harmless from any and all claims or causes of action arising from the performance of the Grant by Grantee or Grantee's agents or employee. This clause shall not be construed to bar any legal remedies Grantee may have for the Grantor's failure to fulfill its obligations pursuant to this agreement. Nothing herein constitutes a waiver by the Grantee of any statutory or common law defenses, immunities or limits on liability.

Amendments

Any amendment to this grant contract, with the exception of Grant Adjustment Notices (GANs), must be in writing and will not be effective until it has been executed and approved by those parties authorized by resolution to enter into this contract, their successors and assigns, or other party authorized by the Grantee through a formal resolution of its governing body. GANs must be approved by the Grantor in writing, and require a written change request by the Grantee.

A GAN may be used for the purposes of transferring budget amounts between line items which do not change the contract value, or other grant status activity. All other changes require a formal amendment as stated above.

Debarment and Suspension Certification

(If applicable) The Grantee agrees to follow the President's Executive Order 12549 and the implementing regulation "Non-procurement Debarment and Suspension; Notice and Final Rule and Interim Final Rule," found at 53 FR 19189, May 26, 1988, as amended at 60 FR 33041, June 26, 1995, including Appendix B, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions"; unless excluded by law or regulation.

Antitrust

The Grantee and Sub-grantees hereby assign to the State of Minnesota any and all claims for overcharges for goods and/or services provided in connection with this contract resulting from

antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

Required Resolution and Certification

The Grantee shall attach hereto, prior to submission, a resolution by the appropriate governing body that legally authorizes the execution of this agreement on behalf of the Grantee.

Successors and Assignees

This agreement shall be binding upon any successors or assignees of the parties.

Other Provisions

The Grantee shall comply with the Data Practices Act codified at Minn. Stat. § 13, the Conflict of Interest provisions of Minn. Stat. §§ 471.87 - 471.88 and the Business Subsidy Act codified at Minn. Stat. §§ 116J.993 - 116J.995.

SPECIAL CONDITIONS

The following activities and costs are based on a budget submitted by the Grantee. Modifications must be approved in writing by the Grantor.

Approved Budget for the Project: Blumberg 1831

<u>Approved Project Costs</u>	<u>Amount</u>
Additional Investigation & Analytical	\$44,100
Mobilization/Demobilization	\$9,000
Site Preparation	\$22,400*
Contaminated Soil Management	\$42,300
Engineering & Regulatory Review	<u>\$76,000</u>
Total	\$193,800

DEED Grant: \$145,350

Local Match: \$48,450

* Denotes match only cost

