PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0132R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A JOINT POWERS AGREEMENT WITH THE MINNESOTA HOUSING FINANCE AGENCY (MINNESOTA HOUSING) RELATED TO THE LOW INCOME HOUSING TAX CREDIT PROGRAM

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a joint powers agreement pertaining to the housing tax credit program, substantially in the form of the copy on file in the office of the city clerk as Public Document No. _____, with the Minnesota housing finance agency (Minnesota housing) for the year 2014.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

CD KH/KO:bel 03/13/2013

STATEMENT OF PURPOSE: This resolution authorizes the City of Duluth to enter into a joint agreement with the Minnesota housing finance agency (Minnesota housing), pursuant to which Minnesota housing will administer the City of Duluth's low income housing tax credits. In 2014, the City of Duluth will receive an estimated $309,986 in tax credits. The Duluth City Council originally approved entering into a joint powers agreement with Minnesota housing for the administration of Duluth's housing tax credits on February 22, 1999.

Each year low income housing tax credits are allocated by the Internal Revenue Service (IRS) to the states, the amount of which is based on their population. Using a published qualified allocation plan, the states accept applications from housing developers and award credits to affordable rental projects. In turn, the

developers sell the credits to corporations to raise capital for their projects. Corporations can use the credits they purchase to reduce the amount of taxes owed to the federal government.

Minnesota has designated certain counties and cities as "suballocators" of housing tax credits, one of which is the city of Duluth. Between the time Congress authorized the program in 1986 and up until 1998, the city independently administered the credits allocated to Duluth. During that time, the IRS issued numerous regulations, clarifications and rulings that significantly complicated the program. In 1999, Minnesota housing and interested suballocator jurisdictions negotiated the first joint powers agreement. Because the state has the major responsibility to ensure compliance with IRS standards and smaller suballocators were having difficulty meeting all the requirements, the state assumed most of the administrative burden. The joint powers agreement has significantly reduced the amount of staff time and resources the city expends on the tax credit program.

This resolution is to approve entering into a joint agreement again for the coming year. By doing so, the city accepts the state's qualified allocation plan for selection of projects. City staff supports approval of the joint powers agreement.

MINNESOTA HOUSING FINANCE AGENCY
HOUSING TAX CREDIT ADMINISTRATION
JOINT POWERS AGREEMENT

WHEREAS, Section 42 of the Internal Revenue code of 1986 provides for a low-income housing credit (the "Housing Credit") to be allocated by Housing Credit Agencies as that term is defined in Section 42((h)(8)(A), pursuant to a Qualified Allocation Plan ("QAP") as that term is defined in Section 42(m)(1); and

WHEREAS, Minnesota Statutes, Section 462A.221, subdivision 1(a) (2006) defines allocating agency under Minnesota law as the Minnesota Housing Finance Agency ("Minnesota Housing") and "each county and city that allocates reserved tax credits as provided by section 462A.222, subdivision 1"; and

WHEREAS, the City of Duluth is a City which allocates reserved credits pursuant to Section 462A.222, subdivision 1(a), and

WHEREAS, Minnesota Housing and the City of Duluth wish to enter into a joint powers agreement pursuant to Minnesota Statutes, Section 471.59 (2008), pursuant to which, except for certain functions expressly set forth in this Agreement, Minnesota Housing will perform all of the housing tax credit allocation and compliance monitoring functions on behalf of the City of Duluth with respect to housing credits allocated for the calendar year 2014 Housing Credit Ceiling, as that term is defined in 26 CFR Section 1.42-14; and

WHEREAS, pursuant to Section 42 Minnesota Housing has adopted a Qualified Allocation Plan which include both procedures for the allocation of low-income Housing Credits ("*Allocation Procedures*") and compliance monitoring procedures ("*Monitoring Procedures*") and also contemplate a joint powers agreement as set forth herein; and '

WHEREAS, the State of Minnesota Housing Tax Credit 2014-2015 Qualified Allocation Plan ("2014-2015 QAP"), the 2014-2015 Housing Tax Credit Program Procedural Manual ("HTC Procedural Manual"), and the 2014-2015 Housing Tax Credit Program Compliance Manual ("HTC Compliance Manual"), and any revisions and amendments thereto, are hereby incorporated in their entirety into this Agreement by reference.

NOW, THEREFORE, IT IS AGREED:

1. **Allocation.**

    a. City of Duluth agrees to transfer its entire 2014-2015 housing tax credit allocation to Minnesota Housing using the form attached hereto. Said credits become part of the Minnesota Housing 2014-2015 housing tax credit ceiling pursuant to Minnesota Statutes Section 462A.222.

    b. With respect to City of Duluth housing tax credits, excluding housing tax credits through the issuance of tax-exempt bonds, the parties agree that the 2014-2015 QAP will apply to all projects and that Minnesota Housing

shall perform all of the allocation duties on behalf of the City of Duluth using the 2014-2015 QAP. All applicants shall use the application forms included in the 2014-2015 QAP.

c. With respect to City of Duluth housing tax credits through the issuance of tax-exempt bonds, the project must comply with the applicable qualified allocation plan as set forth in the 2014-2015 QAP. The parties agree that Minnesota Housing shall conduct the Section 42(m)(1)(d) review and the bond issuer shall conduct the Section 42(m)(2)(d) review for said credits.

d. Under Round 1 of the 2014-2015 QAP, Minnesota Housing shall make selections according to the selection processes established by the 2014-2015 QAP and shall allocate housing tax credits only to the highest ranking project of City of Duluth and only to the extent housing tax credits are available, subject to the limitations contained in Article 8 of the 2014-2015 QAP. The City of Duluth understands that if said project does not score high enough relative to all of the projects competing for housing tax credits said project may receive only a portion, or none, of the housing tax credits sought under Round 1.

e. Unsuccessful applicants may apply for housing tax credits under Round 2 of the 2014-2015 QAP.

2. **Compliance Monitoring.** For all projects receiving their initial allocation of housing tax credits from Minnesota Housing, all compliance monitoring functions throughout the Compliance Period and Extended Use Period for each project, as those terms are defined in Internal Revenue Code Sections 42(i)(l)(i) and 42(h)(6)(D), shall be performed by Minnesota Housing. Minnesota Housing shall perform the compliance monitoring responsibilities for the projects pursuant to the compliance monitoring provisions of the 2014-2015 QAP, the HTC Compliance Manual and 26 CFR Section 1.42.5, all as may be amended from time to time.

3. **Compensation.** Only Minnesota Housing shall charge and receive compensation for the allocation and compliance duties and shall do so in accordance with the HTC Procedural Manual and the HTC Compliance Manual. The compensation shall be paid to Minnesota Housing directly by the tax credit applicant/owner at the times and in the amounts set forth therein.

4. **Term of Contract.** Subject to execution by all of the parties herein below, this Agreement shall be effective on April 12, 2013. With respect to the allocation responsibilities herein, this Agreement shall terminate when all of the allocation responsibilities under this Agreement have been completed or five years from the effective date of this Agreement, whichever occurs first. With respect to the compliance monitoring responsibilities as described hereinabove, said responsibilities shall continue for so long as is legally required and shall survive termination of this Agreement.

5. **Addresses for Notices**. All notices to be given by either party to the other hereunder shall be in writing addressed as follows:

(a) To City of Duluth at:

City of Duluth
Community Development Division
407 City Hall
Duluth, MN 55802

(b) To Minnesota Housing at:

Minnesota Housing Finance Agency
400 Sibley Street, Suite 300
St. Paul, Minnesota 55101-1998

or addressed to any such party at such other address as such party shall hereafter furnish by notice to the other party.

6. **Records.** Both Minnesota Housing and City of Duluth agree that it will make available all pertinent information, data and records under their respective control for each other's use in the performance of this Agreement, and will assist the other, whenever possible, to obtain such records, data and information.

7. **Liability.** Each party shall be responsible for its own acts and omissions, the acts and omissions of its employees, and results thereof to the extent authorized by law. The parties shall not be responsible for the acts of any others and the results thereof.

8. **Assignment.** Neither party shall assign any interest in this Agreement without prior written consent of the parties and subject to such conditions and provisions as are deemed necessary.

9. **Independent Contractors.** The parties agree that the employees of Minnesota Housing shall always be considered employees of Minnesota Housing for all purposes including workers' compensation and the employees of the City of Duluth shall always be considered employees of the City of Duluth for all purposes including workers' compensation. No employee of either party shall be entitled to any claim or benefit from the other party from any event or occurrence arising out of the performance of the Agreement. This agreement is not intended and should not be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto. Neither party under any circumstances shall be liable for any employee benefits of the other party's employees. This Agreement shall be construed in such a manner as to not interfere with the contractual obligations of either party with its employees under any valid collective bargaining agreement.

10. **Amendments.** This Agreement may be amended only in writing signed by the parties.

11. **Validity of Agreement.** Pursuant to Minnesota Statutes Section 16C.05, this Agreement is not valid until all necessary signatures have been obtained.

CITY OF DULUTH

By: _____
Its: Mayor

Date: _____

MINNESOTA HOUSING FINANCE AGENCY

By: _____
Its: _____

Date: _____

APPROVED BY

COMMISSIONER OF ADMINISTRATION

By: _____
Its: _____

Date: _____