

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

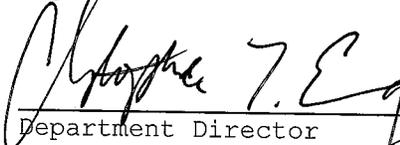
13-0564R

RESOLUTION AUTHORIZING AN AGREEMENT FOR LOAN A WITH BNSF RAILWAY COMPANY AND TATE & LYLE INGREDIENTS AMERICAS LLC IN AN AMOUNT NOT TO EXCEED \$688,642.59, CONTINGENT UPON RECEIPT OF A MINNESOTA INVESTMENT FUND GRANT - 2012 DISASTER RECOVERY PROGRAM FROM THE MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT.

CITY PROPOSAL:

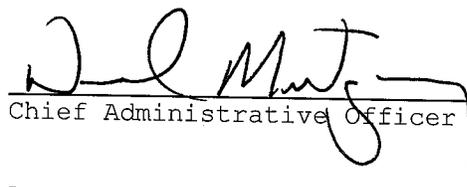
RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with BNSF Railway Company (BNSF) and Tate & Lyle Ingredients Americas LLC (Tate & Lyle) as co-borrowers for replacement of a BNSF rail and bridge tracks located over Kingsbury Creek in Duluth damaged as a result of the June 2012 flood event, in an amount not to exceed \$688,642.59, payable from Fund 235 (Duluth recovery loan program fund), Agency 020 (planning), Object 5434 (grants & Awards), contingent upon receipt by the city of a Minnesota Investment Fund Grant - 2012 Disaster Recovery Program from the Minnesota Department of Employment and Economic Development (DEED) pursuant to grant #DRLF-12-0002-V-FY13 (the "MIF grant").

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

STATEMENT OF PURPOSE: This resolution authorizes the City to enter into a loan agreement titled "Loan Agreement of Minnesota Investment Funds" (Loan) with BNSF Railway Company (BNSF) and Tate & Lyle Ingredients Americas LLC (Tate & Lyle) as co-borrowers in the amount of \$688,642.59. The sole source of funds for this Loan to BNSF and Tate & Lyle is a DEED MIF 2012 Disaster Recovery Program grant (2012 Disaster Recovery Grant). The 2012 Disaster Recovery Grant is an interest free loan program for businesses directly and adversely affected by the 2012 flood event (Event). The loan proceeds will be provided to BNSF upon their written request after they have completed the replacement of a BNSF rail and bridge tracks located over Kingsbury Creek in Duluth damaged as a result of the Event. Tate & Lyle will be the guarantor under the agreement and be responsible to make the loan payments. 50% of the loan is forgiven over a 10 year period if the business stays in operation in this location for 10 years. The other 50% is paid back to the Minnesota Department of Employment & Economic Development at no interest prorated over a 9 year period.

AGREEMENT FOR LOAN OF MINNESOTA INVESTMENT FUNDS

THIS AGREEMENT is made and entered into as the ___ day of _____, 2013 (the “Effective Date”), by and among the City of Duluth (the “City”) and BNSF Railway Company, a Delaware corporation (the “Borrower”) and Tate & Lyle Ingredients Americas LLC, a Delaware limited liability company (the “Co-Borrower”)

WHEREAS, City has been designated by the President of the United States as a federal disaster area resulting from a rain event of June 21-22, 2012 and the resulting flooding (the “Event”)

WHEREAS, the City as a result of the Event has applied to the Minnesota Department of Employment and Economic Development for a Minnesota Investment Fund Disaster Recovery Grant (the “MIF Grant”) pursuant to an application (the “Grant Application”) and received approval for said grant; and

WHEREAS, Grant Agreement Number DRLF-12-0002-V-FY13 (the “Grant Agreement”) between the Minnesota Department of Employment and Economic Development and the City has been executed and requires that the Borrower agree to loan terms with the City regarding the MIF Grant; and

WHEREAS, Borrower sustained damage as a result of the Event to its bridge and track over Kingsbury Creek in Duluth (“Borrower’s Railway”); and

WHEREAS, Co-Borrower’s is a user of Borrower’s Railway and has been adversely affected by its inability to utilize Borrower’s Railway for transporting its products; and

WHEREAS, Co-borrower, in consideration of the City agreeing to grant the loan described herein to Borrower, agrees to pay all money due or which may become due and payable to the City under this Agreement; and

WHEREAS, the parties hereto agree to incorporate into this Agreement by reference said Grant Application and Grant Agreement as if fully set forth herein word for word;

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

ARTICLE 1 **Definitions**

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“**Application**” means the application submitted by Borrower to City for Loan funds to fund a portion of the Borrower’s costs of the Project, which Application shall conform to the requirements of Section VIII, Paragraph B of the Guidelines.

“**Benefit Date**” means the date that the Borrower receives the Initial Disbursement, but shall be

no later than December 31, 2013.

“City” means City of Duluth.

“Collateral” means the Guaranty referenced in Section 4.3 below and any other collateral required by City to secure repayment of the Loan.

“Evidentiary Materials” means that documentation of Borrower’s use of the Loan funds and other funds to pay for the costs of the Project which shall include that documentation described in Paragraph 2.1 e. of the Grant Agreement and such other documentation as the City may request.

“Grant Agreement” means Minnesota Department of Employment and Economic Development Grant Agreement #DRLF-12-0002-V-FY13.

“Grantor” or “Grantor Agency” means the Minnesota Department of Employment and Economic Development.

“Guaranty” means the guaranty of Co-Borrower, Tate & Lyle Ingredients Americas LLC.

“Guidelines” means the City’s Business Recovery Loan Program guidelines approved by the State Department of Employment and Economic Development Business and Community Development Division.

“Initial Disbursement Date” means the date of the first disbursement of any Loan Proceeds by the City to the Borrower.

“Leveraged Funds” means insurance proceeds made available to Borrower, if any, to pay for any portion of the costs of the Project as a result of the damage caused by the Event and any other funds available to Borrower to fund such costs.

“Loan” means the funds disbursed by the City to the Borrower pursuant to this Agreement. The amount of the Loan shall not exceed the amount expended by Borrower to pay Project costs less the amount of the Leveraged Funds or the amount set forth in Section 5.1 below, whichever is less.

“MIF” means the Minnesota Investment Fund.

“MIF Grant” means the grant of funds by the Grantor Agency to the City pursuant to the Grant Agreement.

“Project” means the Borrower’s replacement of rail and bridge tracks located over Kingsbury Creek in Duluth described in the Application.

“Property” means that properties located at BNSF Railroad Milepost 0.1, Duluth, St. Louis County, Minnesota, which Property is shown on Exhibit A.

“State” means the state of Minnesota.

“Termination Date” means the date of the final payment made to the City.

ARTICLE 2

Financing for Project

Section 2.1. MIF Loan/Grant. The MIF Grant will be used by the City to make a loan to the Borrower of not more than \$700,000 for the Project costs. The City’s obligations under this Agreement are expressly contingent on the City’s receipt of funds from the Grantor Agency pursuant to the Grant Agreement in the amount set forth in the Grant Agreement; in the event that the City receives an amount less than that set forth in the Grant Agreement, the City shall have the right, at its sole discretion, to reduce the amount of the Loan or not to make the Loan.

ARTICLE 3

MIF Loan Terms and Conditions

Section 3.1. Basic Loan Terms. The principal amount of the Loan shall not exceed \$700,000. The Loan terms may not be modified without prior written approval from the Grantor Agency. The Loan shall be used exclusively for the Project costs. The detailed Loan terms are set forth in Article 5 of this Agreement.

Section 3.2. Prepayment. Prepayment of the Loan may occur at any time during the Loan without penalty.

Section 3.3. Surety Deposits Required for Construction Contracts: Minnesota Statutes, section 290.9705, pertains to foreign corporations that perform construction work in Minnesota and applies if State funds are used for construction.

Section 3.4. Prevailing Wage. Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry if loan funds are used for the erection, construction, remodeling, or repair of a project financed in whole or part by state funds. Specifically, all Borrower’s contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

Section 3.6. Termination. This Agreement shall automatically terminate without any notice to Borrower: (1) if no Loan Proceeds have been disbursed to the Borrower prior to December 31, 2013; or (2) if: (a) the Borrower has not received any disbursement of Loan Proceeds from the City; and (b) the Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes “insolvent” as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a

dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or is the subject of an order for relief in such bankruptcy case, or is adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment.

ARTICLE 4

Default and Collateral

Section 4.1. Default. The Borrower and Co-Borrower shall be in default under this Agreement upon the happening of any one or more of the following events:

(a) the Co-Borrower fails to pay when due any amount payable on the Loan and such nonpayment is not remedied within ten (10) business days after written notice thereof to the Borrower and Co-Borrower by the City;

(b) the Borrower is in breach in any material respect, of any of the Borrower's obligations, covenants, warranties, representations or agreements under this Agreement (other than nonpayment of any amount payable on the Loan) and remains in breach in any material respect for thirty (30) business days after written notice thereof to the Borrower by the City; provided, however, that if such breach shall reasonably be incapable of being cured within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to cure such breach, no default shall exist so long as the Borrower is proceeding to cure such breach;

(c) the Co-Borrower, on or after the Initial Disbursement Date, fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment; or

(d) a final judgment is entered against the Co-Borrower that the City reasonably deems will have a material, adverse impact on the Co-Borrower's ability to comply with the Co-Borrower's obligations under this Agreement.

Section 4.2. Remedies Upon Default.

(a) In the event of a default, the City shall have the right as its option and without demand

or notice, to declare all or any part of the Loan immediately due and payable by the Co-Borrower. All sums so due and payable and not paid within ten (10) days of declaration of default by City shall bear interest at the rate of Twelve (12%) percent per annum. Further the City shall have the right to demand and be entitled to declaratory or injunctive relief or both to enforce any and all terms of the Agreement. In addition to the rights and remedies granted hereby, the City shall have all of the rights and remedies available under the Uniform Commercial Code and any other applicable law.

(b) The Co-Borrower agrees to pay the costs and expenses incurred by the City in enforcing its rights under this Agreement, including but not limited to the City's attorneys' fees. If any notice of sale, disposition or other intended action by the City is required by law to be given to the Co-Borrower, such notice shall be deemed reasonably and properly given if mailed to the Co-Borrower at the Property or at such other address of the Co-Borrower as may be shown herein, at least fifteen (15) days before such sale, disposition or other intended action.

Section 4.3. Guaranty. Notwithstanding anything contained herein, no Loan disbursement shall be made to the Borrower until such time as the City receives a fully executed guaranty in the amount of \$700,000 by the Co-Borrower, as Guarantor, in favor of the Borrower and City of Duluth pursuant to which Guarantor unconditionally guarantees to City the repayment obligation of the City to DEED pursuant to the Grant Agreement and any extensions, renewals or replacement hereof. A form of Guaranty is attached hereto as Exhibit B.

ARTICLE 5

Loan Disbursement Provisions

Section 5.1. Payment Requisition Documentation and Format. Loan disbursements shall be for costs of the Project and shall not exceed \$700,000. The Loan shall be disbursed to the Borrower only after the City has received from the Borrower documentation of the expenditures for the aforementioned uses. Upon receipt of such documentation, the City will disburse an amount equal to the amount of the expenditure, up to a total disbursement amount of \$700,000.

Section 5.2. Provision for Evidentiary Materials. No disbursements of Loan funds shall be made until all Evidentiary Materials required by the Grantor Agency have been submitted and approved by the Grantor Agency. These Evidentiary Materials shall include, but not necessarily be limited to, the materials described in Article 6 of this Agreement and the invoices described in Section 5.1.

Section 5.3. Project Time Frame. Borrower has completed the project by December 31, 2013.

Section 5.4. Co-Borrower's Loan Terms. In consideration of Borrower's completion of the Project for Co-Borrower's use, Co-Borrower has agreed to accept Borrower's payment obligations hereunder. Half of the Loan principal shall be amortized over one hundred eight (108) months (9 years). Except as provided for in Section 4.2 above the Loan shall bear interest at a rate of 0% interest per annum. The remaining half of the Loan principle shall be forgiven if

Co-Borrower continues to own and operate its business activities in Duluth for a period of ten (10) years from the Effective Date. If Co-Borrower closes or moves its business, otherwise ceases to continue to operate its existing business in substantially the same manner as existing at the time of this Agreement or otherwise defaults on the terms of this Agreement during the 10-year period, the remaining outstanding balance of the Loan will be due and payable. A copy of the amortization schedule is attached hereto as Exhibit C.

Section 5.5. Loan Repayments Schedule. Payments will be deferred for one (1) year from the Effective Date (the “Deferral Period”). Payments of principal and interest shall commence on the first day of the first month immediately following Deferral Period, and shall continue on the first day of each and every month thereafter, and shall continue until paid in full.

Section 5.6. Liability of the Borrower and the Co-borrower is not joint and several. The liability of the Co-borrower is not joint and several and coexistent with that of the Borrower.

ARTICLE 6

Provision of Evidentiary Material Requirement

Section 6.1. Provision of Evidentiary Materials. In addition to those materials described in Section 5.2 of this Agreement, the Borrower shall provide the City with all Evidentiary Materials according to the format and timetable cited in the Grant Agreement. The City will forward these Evidentiary Materials to the Grantor Agency and assist in expediting reviews leading to a release of the Loan.

Section 6.2. Documentation of Use of Funds. The Borrower must provide the City with necessary documentation that the Loan and the Leveraged Funds, if any, have been used for the items and purposes stated in the Grant Application prior to submitting the final progress report and requesting grant closeout from the Grantor Agency.

Section 6.3. Job Retention documentation by Co-Borrower. The Co-Borrower shall submit to the City a written report by January 15 of each year and shall continue until the Loan is paid in full, on forms provided by the City of the job retention obligations of Co-Borrower. This information shall be provided by the Co-Borrower and must include at a minimum:

- (a) the number of jobs retained at its Duluth, MN location; and
- (b) the job title, wages, benefits and hourly value of such benefits for each retained job at its Duluth, MN location.

ARTICLE 7

First Source Employment Agreement

Section 7.1. First Source Employment Referral Agreement. (Minnesota Statutes Section 116L.66 and any successor statutes.) The Co-Borrower shall list any vacant or new positions in Duluth with the local Workforce Development Center.

ARTICLE 8

Nondiscrimination

Section 8.1. Nondiscrimination. The provisions of Minnesota Statutes, Section 181.59, which relate to civil rights and discrimination, shall be considered a part of this Agreement as though wholly set forth herein and the Co-Borrower shall comply with each such provision throughout the term of this Agreement.

ARTICLE 9

Borrower's and Co-Borrower's Acknowledgments Representation, and Warranties

Section 9.1. Acknowledgments of Borrower. (a) The Borrower acknowledges that the City, in order to obtain funds for part of the City's activities in connection with the Project, has applied for the MIF Grant to the Grantor Agency under the Minnesota Investment Fund Program, Business and Community Development Division, and that the City has entered into the Grant Agreement with the Grantor Agency, setting forth the terms, conditions, and requirements of the MIF Grant. The Borrower further acknowledges that it has made certain representations and statements in the Grant Application concerning its activities relating to the Project, and that the Borrower is designated and identified under the Grant Agreement. Borrower agrees that it will, to the extent practical and as it relates to the construction of the project and the documentation related thereto, perform all obligations of City under the Grant Agreement as they related to the Project and the Loan hereunder, and to the extent that Borrower cannot itself perform such City obligations, it will use its best efforts to provide all assistance to City in the performance of such obligations by City.

(b) The Borrower acknowledges that nothing contained in the Grant Agreement or this Agreement, nor any act of the Grantor Agency or the City, shall be deemed or construed to create between the Grantor Agency and the Borrower (or, except as Borrower and lender between the City and the Borrower) any relationship, including but not limited to that of third-party beneficiary, principal and agent, limited or general partnership, or joint venture.

Section 9.2. Representations and Warranties of Borrower. The Borrower warrants and represents, in connection with the MIF Grant and for the benefit of the Grantor Agency and the City, that:

(a) Representations, statements, and other matters provided by the Borrower relating to those activities of the Project to be completed by the Borrower, which were contained in the Grant Application, were true and complete in all material respects as of the date of submission to the City and that such representations, statements, and other matters are true as of the date of this Agreement and that there are no adverse material changes in the financial condition of the Borrower's business.

(b) To the best of the Borrower's knowledge, no member, officer, or employee of the City, or its officers, employees, designees, or agents, no consultant, member of the governing body of the City, and no other public official of the City, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit there from, which is part of the Project.

(c) The Borrower acknowledges that the Grantor Agency, in selecting the City as recipient of the Grant, relied in material part upon the assured completion of the Project to be carried out by the Borrower, and the Borrower warrants that said Project will be carried out as promised.

(d) The Borrower warrants that to the best of its knowledge, it has obtained all federal, state, and local governmental approvals, reviews, and permits required by law to be obtained in connection with the Project and has undertaken and completed all actions necessary for it to lawfully execute this Agreement as binding upon it.

(e) The Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to Loan, and that any duly authorized representative of the Grantor Agency shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Borrower until such time that the City and the Grantor Agency have both determined that all issues, requirements, and close-out procedures relating to or arising out of the MIF Grant have been settled and completed.

(f) The Borrower warrants that no transfer of any or all of the Loan Proceeds by the City to the Borrower shall be or be deemed an assignment of Loan Proceeds, and the Borrower shall neither succeed to any rights, benefits, or advantages of the City under the Grant Agreement, nor attain any right, privileges, authorities, or interest in or under the Grant Agreement.

(g) The Borrower warrants that it has fully complied with all applicable local, state, and federal laws pertaining to its business and will continue such compliance throughout the terms of this Agreement. If at any time notice of noncompliance is received by the Borrower, the Borrower agrees to take any necessary action to comply with the local, state, or federal law in question. Borrower does not waive the pre-emptive effect of any federal or state law.

Section 9.3. Acknowledgments of Co-Borrower. (a) The Co-Borrower acknowledges that the City, in order to obtain funds for part of the City's activities in connection with the Project, has applied for the MIF Grant to the Grantor Agency under the Minnesota Investment Fund Program, Business and Community Development Division, and that the City has entered into the Grant Agreement with the Grantor Agency, setting forth the terms, conditions, and requirements of the MIF Grant. The Co-Borrower further acknowledges that the Borrower, on Co-Borrower's behalf, has made certain representations and statements in the Grant Application concerning its activities relating to the Project. Co-Borrower agrees that it will, to the extent possible, perform all obligations of City under the Grant Agreement as they related to the Project and the Loan hereunder and, and to the extent that Co-Borrower cannot itself perform such City obligations, it will use its best efforts to provide all assistance to City in the performance of such obligations by City.

(b) A copy of the Grant Agreement shall be on file in the offices of the City. In the event any provision of this Agreement relating to the Co-Borrower's obligations hereunder is inconsistent with the provisions of the Grant Agreement relating to the Co-Borrower's activities there under, the provisions of the Grant Agreement shall prevail.

(c) The Co-Borrower acknowledges that nothing contained in the Grant Agreement or this Agreement, nor any act of the Grantor Agency or the City, shall be deemed or construed to create between the Grantor Agency and the Co-Borrower (or, except as Co-Borrower and lender

between the City and the Co-Borrower) any relationship, including but not limited to that of third-party beneficiary, principal and agent, limited or general partnership, or joint venture.

Section 9.2. Representations and Warranties of Co-Borrower. The Co-Borrower warrants and represents, in connection with the MIF Grant and for the benefit of the Grantor Agency and the City, that:

(a) Representations, statements, and other matters provided by the Co-Borrower relating to those activities of the Project to be completed by the Co-Borrower, which were contained in the Grant Application, were true and complete in all material respects as of the date of submission to the City and that such representations, statements, and other matters are true as of the date of this Agreement and that there are no adverse material changes in the financial condition of the Co-Borrower's business.

(b) To the best of the Co-Borrower's knowledge, no member, officer, or employee of the City, or its officers, employees, designees, or agents, no consultant, member of the governing body of the City, and no other public official of the City, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit there from, which is part of the Project.

(c) The Co-Borrower acknowledges that the Grantor Agency, in selecting the City as recipient of the Grant, relied in material part upon the assured completion of the Project to be carried out by the Co-Borrower, and the Co-Borrower warrants that said Project will be carried out as promised.

(d) The Co-Borrower warrants that to the best of its knowledge, it has obtained all federal, state, and local governmental approvals, reviews, and permits required by law to be obtained in connection with the Project and has undertaken and completed all actions necessary for it to lawfully execute this Agreement as binding upon it.

(e) The Co-Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to Loan, and that any duly authorized representative of the Grantor Agency shall, at all reasonable times and, provided, that no event of default has occurred and is continuing, no more than once per calendar year, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Co-Borrower relating directly to the Loan until such time that the City and the Grantor Agency have both determined that all issues, requirements, and close-out procedures relating to or arising out of the MIF Grant have been settled and completed.

(f) The Co-Borrower warrants that no transfer of any or all of the Loan Proceeds by the City to the Borrower shall be or be deemed an assignment of Loan Proceeds, and the Co-Borrower shall neither succeed to any rights, benefits, or advantages of the City under the Grant Agreement, nor attain any right, privileges, authorities, or interest in or under the Grant Agreement.

(g) The Co-Borrower warrants that it has fully complied with all applicable local, state, and

federal laws pertaining to its business and will continue such compliance throughout the terms of this Agreement. If at any time notice of noncompliance is received by the Co-Borrower, the Co-Borrower agrees to take any necessary action to comply with the local, state, or federal law in question.

ARTICLE 10

Other Special Conditions

Section 10.1. Antitrust. The Borrower hereby assigns to the State of Minnesota any and all claims that Borrower may make for overcharges as to goods and services provided in connection with this Agreement resulting from antitrust violations that arise under the antitrust laws of the United States or the antitrust laws of the State.

Section 10.2. Compliance with Applicable Laws. Borrower will comply with all laws applicable to Borrower including, but not limited to, laws related to non-discrimination, antitrust, workers compensation or employer liability.

Section 10.3. Business with the State of Minnesota/State Tax Laws. The Borrower is required by Minnesota Law to provide its Minnesota tax identification number if it does business with the State of Minnesota. This information may be used in the enforcement of Federal and State tax laws. Supplying these numbers could result in an action to require the Borrower to file State tax returns and pay delinquent State tax liabilities. This Agreement will not be approved unless these numbers are provided. These numbers will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations.

Minnesota Tax ID: 7491582

Federal Employer ID: 41-6034000

Section 10.4. Grant Closeout. The Borrower shall, prior to grant closeout from the Grantor Agency, provide the City with all documentation necessary to demonstrate that the Loan has been used for the items and purposes set forth in the Grant Application.

Section 10.6. Effect on Other Agreements. Nothing in this Agreement shall be construed to modify any term of any other agreement to which the City, the Co- Borrower and the Borrower are parties.

Section 10.7. Release and Indemnification Covenants. Except for any breach of the representations and warranties of the City or the negligence or other wrongful act or omission of the following named parties, the Borrower and Co-Borrower agree to protect and defend the City and the governing body members, officers, agents, servants, and employees thereof during the term of this agreement, and further agree to hold the aforesaid harmless from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from their respective negligence concerning the Project and any breach by Borrower or Co-Borrower of their respective agreements or obligations hereunder . Borrower's and Co-Borrower's obligations under this section 10.7 are not joint and several.

Section 10.8. Modifications. This Agreement may be modified solely through written

amendments hereto executed by the Borrower, Co-Borrower and the City and approved by the Grantor Agency.

Section 11.9. Notices and Demands. Any notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered only if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

as to the City: City of Duluth
ATTN: Executive Director
Business & Economic
Development
402 City Hall
411 W. 1st Street
Duluth, MN 55802

as to the Borrower: BNSF Railway Company
Attn: Aaron Hegeman, Director,
Public Private Partnerships
2500 Lou Menk Drive
Fort Worth, TX 76131

as to the Co-Borrower: Tate & Lyle Ingredients
Americas LLC
Attn: General Counsel
5450 Prairie Stone Pkwy
Hoffman Estates, IL 60192

or at such other address with respect to any party as that party may, from time to time, designate in writing and forward to the others as provided in this Section 11.9.

Section 10.10. Conflict of Interests; Representatives Not Individually Liable. No officer or employee of the City may acquire any financial interest, direct or indirect, in this Agreement, the Project. No officer, agent, or employee of the City shall be personally liable to the Borrower or any successor in interest in the event of any default or breach by the City or for any amount that may become due to the Borrower or on any obligation or term of this Agreement.

Section 10.11. Binding Effect. The covenants and agreements in this Agreement shall bind and benefit the heirs, executors, administrators, successors, and assigns of the parties to this Agreement.

Section 10.13. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted only for convenience of reference and shall be disregarded in construing or interpreting any of its provisions.

Section 10.14. Amendments; Counterparts. This Agreement may be amended only by a written instrument signed by both parties. This Agreement may be executed in counterparts, each of

which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

Section 10.15. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota without regard to its conflict of laws provisions. All proceedings related to this Agreement shall be venued in Duluth, Minnesota, and the parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 10.16. Waiver. The failure or delay of any party to take any action or assert any right or remedy, or the partial exercise by any party of any right or remedy shall not be deemed to be a waiver of such action, right, or remedy if the circumstances creating such action, right, or remedy continue or repeat.

Section 10.17. Entire Agreement. This Agreement, with the exhibits hereto, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Agreement.

Section 10.18. Severability. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.

Section 10.19. Immunity. Nothing in this Agreement shall be construed as a waiver by the City of any immunities, defenses, or other limitations on liability to which the City is entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf and the Borrower has caused this Agreement to be duly executed in its name and behalf as of the date first above written.

CITY OF DULUTH

BNSF RAILWAY COMPANY

By: _____
Its Mayor

By: _____

Attest:

Its: _____

By: _____
City Clerk
Date:

Countersigned:

City Auditor

Approved as to form:

City Attorney

**TATE & LYLE INGREDIENTS
AMERICAS LLC**

By _____

Its: _____

By _____

Its: _____

EXHIBIT A

Map of Property

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



Google

Address **Kingsbury Creek**
Duluth, MN

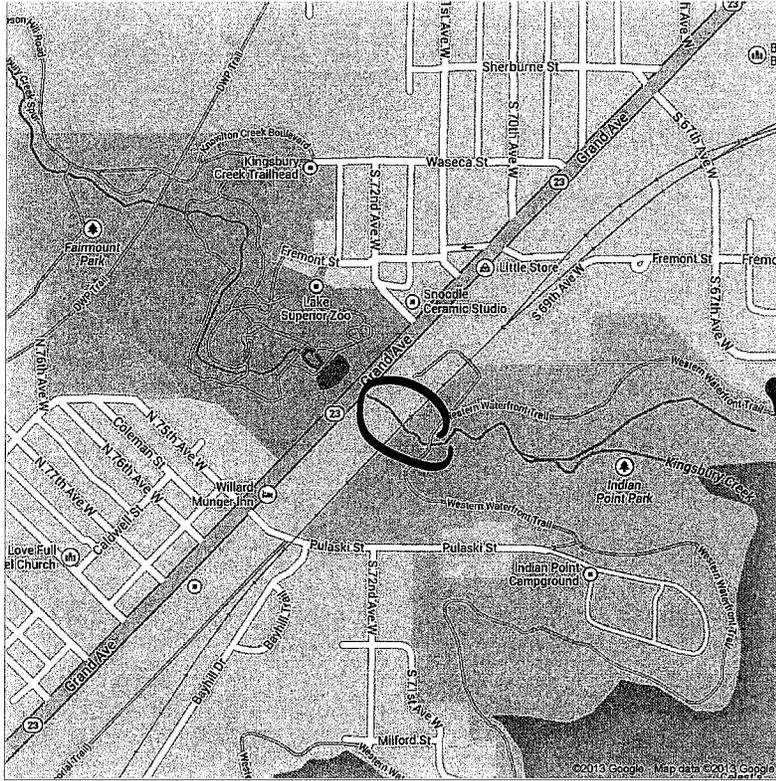


EXHIBIT B
Form of Guaranty

GUARANTY

This Guaranty is given this _____ day of _____, 2013, by Tate & Lyle Ingredients Americas LLC, ("Guarantor"), to the City of Duluth, Minnesota ("City").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the City to enter into that certain Minnesota Investment Fund Grant Agreement between the State of Minnesota through its Department of Employment and Economic Development, Business and Community Development Division ("DEED") and the City dated February 19, 2013 in the amount of \$2,408,000 with Grant Number DRLF-12-0002-V-FY13, 2012 Disaster Recovery Program (the "Grant Agreement"), and to further induce the City to enter into that certain Minnesota Investment Fund Loan Agreement between BNSF Railway Company ("BNSF") and the City dated _____, 2013 in the amount of \$700,000(the "Loan Agreement"), the Grant Agreement and the Loan Agreement being on file in the Office of the City Clerk and incorporated as if fully set forth herein, Guarantor hereby absolutely and unconditionally guarantees to the City, the full, prompt and complete payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debt, liability and obligation of the City to DEED evidenced by or arising out of the Grant Agreement and any extensions, renewals or replacements thereof, as it relates to the Loan Agreement (hereinafter referred to as "Indebtedness").

The undersigned further acknowledges and agrees with the City that:

1. No act or thing, except discharge by DEED of the Indebtedness due to full payment or otherwise, shall in any way exonerate Guarantor or modify, reduce, limit or release the liability of the Guarantor hereunder.
2. Guarantor waives exhaustion of recourse against BNSF and agree that any action that may be brought for enforcement of rights against BNSF under the Loan Agreement is in the City's sole discretion. The failure of the City to require strict performance of any of the terms of Loan Agreement, or any extension of time, concession, indulgence or waiver of performance granted by the City will not release any Guarantor from liability under this Guaranty.
3. Guarantor shall not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to Guarantor against the City, BNSF or any person or party liable for payment of the Indebtedness, or as to any collateral security therefor.
4. The City may enter into transactions resulting in the creation or continuance of Indebtedness, without approval by or notice to Guarantor. Indebtedness may be created and continued in any amount without affecting or impairing the liability of

Guarantor. The City may apply any sums received by or available to the City on account of the Indebtedness from BNSF and any other person or party (except the Guarantor) to the payment of the excess. Such application to the payment of the excess shall not reduce, affect or impair the liability of Guarantor hereunder.

5. The liability of Guarantor shall not be affected or impaired by the following acts or things (which the City is expressly authorized to do without notice to or approval by Guarantor): (i) any one or more extensions or renewals of the Indebtedness or the Loan Agreement (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to the Indebtedness or the Loan Agreement; and (ii) any waiver, adjustment, forbearance, or compromise granted by DEED to the City, any delay or lack of diligence by DEED in the enforcement of Indebtedness, or any failure to by DEED to institute proceedings, file a claim, give any required notice or otherwise protect the Indebtedness.
6. Guarantor waives any and all defenses, claims and discharges against the City, or any other obligor, pertaining to Indebtedness, except the defense of discharge of the Indebtedness by DEED. Without limiting the generality of the foregoing, Guarantor will not assert, plead or enforce against the City any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to BNSF or any other person liable in respect of any Indebtedness or any set off available against the City to BNSF or any such other person, whether or not on account of a related transaction.
7. The validity of this Guaranty and the obligations of Guarantor under this Guaranty will in no way be terminated, affected or impaired by reason of the bankruptcy of BNSF, or by the assertion by the City against BNSF of any of the rights or remedies reserved to the City under the Loan Agreement.
8. Guarantor waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness.
9. This Guaranty shall be effective upon delivery to the City, without further act, condition or acceptance by the City and shall be binding upon Guarantor and its heirs, legal representatives, successors and assigns of Guarantor for the benefit of the City and its successors and assigns.
10. Any invalidity or unenforceability of any provision or application of this Guaranty shall not affect other lawful provisions and application hereof, and to this end the provision of this Guaranty are declared to be severable.
11. This Guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by Guarantor and the City.

- 12. This Guaranty shall be governed by the laws of the State of Minnesota.
- 13. Counterparts. This Guaranty may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument. This Guaranty may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

IN WITNESS WHEREOF, this guaranty has been duly executed by the undersigned.

TATE & LYLE INGREDIENTS AMERICAS LLC

By _____

Its _____

By _____

Its _____

STATE OF ILLINOIS)
)ss.
 COUNTY OF HOFFMAN ESTATES)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____ and _____, the _____ and _____, respectively, Tate & Lyle Ingredients Americas LLC, a _____ created and existing under _____, on behalf of Tate & Lyle Ingredients Americas LLC.

 Notary Public

EXHIBIT C

Amortization Schedule

BNSF & Tate & Lyle

Principal **688,643**
Interest Rate **0.00%**
Term - months **108**

Monthly pymt **\$3,188.16**

Amortization table

Month	Interest	Principal	Balance	P&I
			688,642.59	
1	0.00	3,188.16	685,454.43	3,188.16
2	0.00	3,188.16	682,266.27	3,188.16
3	0.00	3,188.16	679,078.11	3,188.16
4	0.00	3,188.16	675,889.95	3,188.16
5	0.00	3,188.16	672,701.79	3,188.16
6	0.00	3,188.16	669,513.63	3,188.16
7	0.00	3,188.16	666,325.47	3,188.16
8	0.00	3,188.16	663,137.31	3,188.16
9	0.00	3,188.16	659,949.15	3,188.16
10	0.00	3,188.16	656,760.99	3,188.16
11	0.00	3,188.16	653,572.83	3,188.16
12	0.00	3,188.16	650,384.67	3,188.16
13	0.00	3,188.16	647,196.51	3,188.16
14	0.00	3,188.16	644,008.35	3,188.16
15	0.00	3,188.16	640,820.19	3,188.16
16	0.00	3,188.16	637,632.03	3,188.16
17	0.00	3,188.16	634,443.87	3,188.16
18	0.00	3,188.16	631,255.71	3,188.16
19	0.00	3,188.16	628,067.55	3,188.16
20	0.00	3,188.16	624,879.39	3,188.16
21	0.00	3,188.16	621,691.23	3,188.16
22	0.00	3,188.16	618,503.07	3,188.16
23	0.00	3,188.16	615,314.91	3,188.16
24	0.00	3,188.16	612,126.75	3,188.16
25	0.00	3,188.16	608,938.59	3,188.16
26	0.00	3,188.16	605,750.43	3,188.16
27	0.00	3,188.16	602,562.27	3,188.16
28	0.00	3,188.16	599,374.11	3,188.16
29	0.00	3,188.16	596,185.95	3,188.16
30	0.00	3,188.16	592,997.79	3,188.16
31	0.00	3,188.16	589,809.63	3,188.16
32	0.00	3,188.16	586,621.47	3,188.16
33	0.00	3,188.16	583,433.31	3,188.16
34	0.00	3,188.16	580,245.15	3,188.16
35	0.00	3,188.16	577,056.99	3,188.16
36	0.00	3,188.16	573,868.83	3,188.16
37	0.00	3,188.16	570,680.67	3,188.16
38	0.00	3,188.16	567,492.51	3,188.16
39	0.00	3,188.16	564,304.35	3,188.16
40	0.00	3,188.16	561,116.19	3,188.16
41	0.00	3,188.16	557,928.03	3,188.16
42	0.00	3,188.16	554,739.87	3,188.16
43	0.00	3,188.16	551,551.71	3,188.16
44	0.00	3,188.16	548,363.55	3,188.16
45	0.00	3,188.16	545,175.39	3,188.16
46	0.00	3,188.16	541,987.23	3,188.16
47	0.00	3,188.16	538,799.07	3,188.16
48	0.00	3,188.16	535,610.91	3,188.16

49	0.00	3,188.16	532,422.75	3,188.16
50	0.00	3,188.16	529,234.59	3,188.16
51	0.00	3,188.16	526,046.43	3,188.16
52	0.00	3,188.16	522,858.27	3,188.16
53	0.00	3,188.16	519,670.11	3,188.16
54	0.00	3,188.16	516,481.95	3,188.16
55	0.00	3,188.16	513,293.79	3,188.16
56	0.00	3,188.16	510,105.63	3,188.16
57	0.00	3,188.16	506,917.47	3,188.16
58	0.00	3,188.16	503,729.31	3,188.16
59	0.00	3,188.16	500,541.15	3,188.16
60	0.00	3,188.16	497,352.99	3,188.16
61	0.00	3,188.16	494,164.83	3,188.16
62	0.00	3,188.16	490,976.67	3,188.16
63	0.00	3,188.16	487,788.51	3,188.16
64	0.00	3,188.16	484,600.35	3,188.16
65	0.00	3,188.16	481,412.19	3,188.16
66	0.00	3,188.16	478,224.03	3,188.16
67	0.00	3,188.16	475,035.87	3,188.16
68	0.00	3,188.16	471,847.71	3,188.16
69	0.00	3,188.16	468,659.55	3,188.16
70	0.00	3,188.16	465,471.39	3,188.16
71	0.00	3,188.16	462,283.23	3,188.16
72	0.00	3,188.16	459,095.07	3,188.16
73	0.00	3,188.16	455,906.91	3,188.16
74	0.00	3,188.16	452,718.75	3,188.16
75	0.00	3,188.16	449,530.59	3,188.16
76	0.00	3,188.16	446,342.43	3,188.16
77	0.00	3,188.16	443,154.27	3,188.16
78	0.00	3,188.16	439,966.11	3,188.16
79	0.00	3,188.16	436,777.95	3,188.16
80	0.00	3,188.16	433,589.79	3,188.16
81	0.00	3,188.16	430,401.63	3,188.16
82	0.00	3,188.16	427,213.47	3,188.16
83	0.00	3,188.16	424,025.31	3,188.16
84	0.00	3,188.16	420,837.15	3,188.16
85	0.00	3,188.16	417,648.99	3,188.16
86	0.00	3,188.16	414,460.83	3,188.16
87	0.00	3,188.16	411,272.67	3,188.16
88	0.00	3,188.16	408,084.51	3,188.16
89	0.00	3,188.16	404,896.35	3,188.16
90	0.00	3,188.16	401,708.19	3,188.16
91	0.00	3,188.16	398,520.03	3,188.16
92	0.00	3,188.16	395,331.87	3,188.16
93	0.00	3,188.16	392,143.71	3,188.16
94	0.00	3,188.16	388,955.55	3,188.16
95	0.00	3,188.16	385,767.39	3,188.16
96	0.00	3,188.16	382,579.23	3,188.16
97	0.00	3,188.16	379,391.07	3,188.16
98	0.00	3,188.16	376,202.91	3,188.16
99	0.00	3,188.16	373,014.75	3,188.16
100	0.00	3,188.16	369,826.59	3,188.16
101	0.00	3,188.16	366,638.43	3,188.16
102	0.00	3,188.16	363,450.27	3,188.16
103	0.00	3,188.16	360,262.11	3,188.16
104	0.00	3,188.16	357,073.95	3,188.16
105	0.00	3,188.16	353,885.79	3,188.16
106	0.00	3,188.16	350,697.63	3,188.16
107	0.00	3,188.16	347,509.47	3,188.16
108	0.00	3,188.16	344,321.31	3,188.16