PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0231R

RESOLUTION AUTHORIZING GRANT AGREEMENT WITH DEED RELATED TO THE MAURICES OFFICE TOWER PROJECT IN THE AMOUNT NOT TO EXCEED $8,500,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with the State of Minnesota Department of Employment and Economic Development, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, accepting a grant in an amount of up to $8,500,000 to fund a portion of the costs of development, design and construction of a public parking facility in conjunction with the Maurices office tower, payable to the Construction Account within the Parking Facility Fund.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

BD/ATTY REA:de 05/02/2014

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize acceptance of a state grant of bonds funds to pay a portion of the costs of constructing a 485 car public parking ramp in conjunction with the maurices office tower project.

General Obligation Bond Proceeds

Grant Agreement - Construction Grant for the 425 Public Parking Facility Project under the Minnesota Business Development Capital Projects Grant Program

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General Obligation Bond Proceeds

Grant Agreement – Construction Grant for the 425 Public Parking Facility Project under the Minnesota Business Development Capital Projects Grant Program

THIS AGREEMENT shall be effective as of _____, 2014, and is between the CITY OF DULUTH, a municipal corporation under the laws of the state of Minnesota (the "Public Entity"), and the MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT, (the "State Entity").

RECITALS

A. Under the provisions contained in the Duluth City Charter and applicable State statute, including but not limited to Laws of Minnesota, 1977, Chapter 257, the Public Entity has been given the authority to acquire, construct and maintain public parking facilities and to finance the same (the "Governmental Program"); and

B. Under the provisions contained in Minnesota Statutes 116J.433 (the "G.O. Bonding Legislation") the State of Minnesota has allocated $8,500,000 (the "G.O. Grant"), which is to be given to the Public Entity as a grant to assist it in the development and construction of the 425 Public Parking Facility Project in furtherance of the Governmental Program;

C. The 425 Public Parking Facility Project is part of a larger mixed-use development project which will include, in addition to the Facility, other public and private elements (to be financed by sources other than the G.O. Grant) including an approximately 185,000 square foot office building for Maurices Incorporated, approximately 15,000 square feet of retail space, and skywalks providing access to and from such improvements (the "Development"); and

D. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

E. The Public Entity's receipt and use of the G.O. Grant to acquire an ownership interest in and/or improve a portion of the Development real property (as further defined below, the "Real Property") and, if applicable, structures situated thereon (as further defined below, the "Facility") will cause the Public Entity's ownership interest in all of such real property and structures to become "state bond financed property", as such term is used in Minn. Stat. § 16A.695 (the "G.O. Compliance Legislation") and in that certain "Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended (the "Commissioner's Order"), even though such funds may only be a portion of the funds being used to acquire such ownership interest and/or improve such real property and

structures and that such funds may be used to only acquire such ownership interest and/or improve a part of such real property and structures; and

F. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Public Entity, and the operation of the Real Property and, if applicable, Facility, as a portion of the Development.

IN CONSIDERATION of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

ARTICLE I
DEFINITIONS

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

"Advance(s)" – means an advance made or to be made by the State Entity to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

"Agreement" - means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the 425 Public Parking Facility Project, as such exists on its original date and any amendments, modifications or restatements thereof.

"Approved Debt" – means public or private debt of the Public Entity that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner of MMB is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

"Architect", if any – means RSP Architects.

"Code" - means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

"Commissioner of MMB" - means the commissioner of the Minnesota Department of Management and Budget, and any designated representatives thereof.

"Commissioner's Order" - means that certain "Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012.

"Completion Date" – means December 31, 2016, the date of projected completion of the Project.

"Contractor" - means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

"Construction Contract Documents" - means the document or documents, in form and substance acceptable to the State Entity, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Public Entity and the Contractor or Contractors for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

"Construction Items" – means the work to be performed under the Construction Contract Documents.

"Counterparty" - means any entity with which the Public Entity contracts under a Use Contract. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property, and if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Declaration" - means a declaration, or declarations, in the form contained in **Attachment I** to this Agreement and all amendments thereto, indicating that the Public Entity's ownership interest in the Real Property and, if applicable, Facility is bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

"Draw Requisition" - means a draw requisition that the Public Entity, or its designee, submits to the State Entity when an Advance is requested, as referred to in Section 6.02.

"Event of Default" - means one or more of those events delineated in Section 2.07.

"Facility", if applicable, - means an approximately 485 car public parking facility, which is located, or will be constructed and located, on the Real Property and all equipment that is a part thereof that was purchased with the proceeds of the G.O. Grant.

"Fair Market Value" – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

"G.O. Bonding Legislation" – means the legislation delineated in Recital B hereinabove as the G.O. Bonding Legislation.

"G.O. Bonds" - means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the G.O. Grant and any bonds issued to refund or replace such bonds.

"G.O. Compliance Legislation" - means Minn. Stat. § 16A.695 as such may subsequently be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

"G.O. Grant" - means a grant of monies from the State Entity to the Public Entity in the amount identified as the "G.O. Grant" in Recital B to this Agreement, as the amount thereof may be modified under the provisions contained herein.

"Governmental Program" – means the operation of the Real Property and, if applicable, Facility for the purpose specified and identified in Recital A of this Agreement as the Governmental Program.

"Initial Acquisition and Betterment Costs" – means the cost to acquire the Public Entity's ownership interest in the Real Property and, if applicable, Facility if the Public Entity does not already possess the required ownership interest, and the costs of betterments of the Real Property and, if applicable, Facility; provided, however, the Commissioner of MMB is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount.

"Inspecting Engineer", if any - means the State Entity's construction inspector, or its designated consulting engineer.

"Leased/Easement Premises" - means the real estate and structures, if any, that are leased to the Public Entity under a Real Property/Facility Lease or granted to the Public Entity under an easement. *This definition is only needed and only applies if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Lessor/Grantor" – means the fee owner/lessor or grantor of the Leased/Easement Premises. *This definition is only needed and only applies if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both, is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Outstanding Balance of the G.O. Grant" – means the portion of the G.O. Grant that has been disbursed to or on behalf of the Public Entity minus any portion thereof previously paid back to the Commissioner of MMB.

"Ownership Value", if any – means the value, if any, of the Public Entity's ownership interest in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity's execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the Commissioner of MMB. The parties hereto agree and acknowledge that such value is $-00.00-; provided, however, the Commissioner of MMB is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank "Not Applicable" is not checked, a rebuttable presumption that the Ownership Value is $0.00 shall be created. (*The blank "Not Applicable" should only be selected and checked when a portion of the funds delineated in* ***Attachment III*** *attached hereto are to be used to acquire the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and in such event the value of such ownership interest should be shown in* ***Attachment III*** *and not in this definition for Ownership Value).*

"Project" - means the Public Entity's acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03. (*If the Public Entity is not using any portion of the G.O. Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in* ***Attachment III*** *hereto and instead shall be included in the definition for Ownership Value under this Section.)*

"Public Entity" - means the entity identified as the "Public Entity" in the lead-in paragraph of this Agreement.

"Real Property" - means the real property located in the County of St. Louis, State of Minnesota, legally described in **Attachment II** to this Agreement.

"Real Property/Facility Lease" - means a long-term lease of the Real Property, the Facility, if applicable, or both by the Public Entity as lessee thereunder. *This definition is only needed and only applies if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is a leasehold interest under a lease. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"State Entity" - means the entity identified as the "State Entity" in the lead-in paragraph of this Agreement.

"Subsequent Betterment Costs" – means the costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term in used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the State Entity and the Commissioner of MMB.

"Use Contract" - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the

Real Property and/or, if applicable, Facility. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property and/or, if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Useful Life of the Real Property and, if applicable, Facility" – means (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments for Facilities that are to be constructed or bettered.

ARTICLE II
GRANT

Section 2.01 **Grant of Monies.** The State Entity shall make and issue the G.O. Grant to the Public Entity, and disburse the proceeds in accordance with the provisions of this Agreement. The G.O. Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the State Entity or the Commissioner of MMB under certain circumstances.

Section 2.02 **Public Ownership.** The Public Entity acknowledges and agrees that the G.O. Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Property and, if applicable, Facility must be owned by one or more public entities. Such ownership may be in the form of fee ownership, a Real Property/Facility Lease, or an easement. In order to establish that this public ownership requirement is satisfied, the Public Entity represents and warrants to the State Entity that it has, or will acquire, the following ownership interests in the Real Property and, if applicable, Facility, and, in addition, that it possesses, or will possess, all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, Facility in the manner specified in Section 2.04:

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property.

☐ Fee simple ownership of the Real Property.

☒ A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.
(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

☐ An easement for the Real Property that complies with the requirements

contained in Section 2.06.
(If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

Ownership Interest in, if applicable, the Facility.

[X] Fee simple ownership of the Facility.

[ ] A Real Property/Facility Lease for the Facility that complies with all of the requirements contained in Section 2.06.
(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

[ ] Not applicable because there is no Facility.

Section 2.03 **Use of Grant Proceeds.** The Public Entity shall use the G.O. Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities, and may not use the G.O. Grant for any other purpose.

(Check all appropriate boxes.)

[ ] Acquisition of fee simple title to the Real Property.

[X] Acquisition of a leasehold interest in the Real Property.

[ ] Acquisition of an easement for the Real Property.

[ ] Improvement of the Real Property.

[ ] Acquisition of fee simple title to the Facility.

[ ] Acquisition of a leasehold interest in the Facility.

[X] Construction of the Facility.

[ ] Renovation of the Facility.

[ ] _____.
(Describe other or additional purposes.)

Section 2.04 **Operation of the Real Property and Facility.** The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for the operation of the Governmental Program or

for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

The Public Entity may enter into Use Contracts with Counterparties for the operation of all or any portion of the Real Property and, if applicable, Facility; provided that all such Use Contracts must have been approved, in writing, by the Commissioner of MMB and fully comply with all of the provisions contained in Sections 3.01, 3.02 and 3.03.

The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a statement, sworn to before a notary public, to such effect to the State Entity and the Commissioner of MMB.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

Section 2.05 **Public Entity Representations and Warranties.** The Public Entity further covenants with, and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. It has legal authority to use the G.O. Grant for the purpose or purposes described in Recital B of this Agreement.

C. It has legal authority to operate the Governmental Program.

D. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration, and all other documents referred to herein.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the G.O. Grant, and all of the information it has submitted or will submit to the State Entity or Commissioner of MMB relating to the G.O. Grant or the disbursement of any of the G.O. Grant is and will be true and correct.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, Facility, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

J. The contemplated use of the Real Property and, if applicable, Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project will be completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been, or will be, obtained.

N. It will operate, maintain, and manage the Real Property and, if applicable, Facility or cause the Real Property and, if applicable, Facility, to be operated, maintained and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, Facility.

O. It will fully enforce the terms and conditions contained in any Use Contract.

P. It has complied with the matching funds requirement, if any, contained in Section 7.23.

Q. It will not, without the prior written consent of the State Entity and the Commissioner of MMB, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Public Entity's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the Real Property and, if applicable, Facility in the manner specified in Section 2.04, and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

R. It reasonably expects to possess the ownership interest in the Real Property and, if applicable, Facility described Section 2.02 for the entire Useful Life of the Real Property and, if applicable, Facility, and it does not expect to sell such ownership interest.

S. It does not reasonably expect to receive payments under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of

the Use Contract or to pay the principal, interest, redemption premiums, and other expenses on any Approved Debt.

T. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the G.O. Grant to complete and fully pay for the Project.

U. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and all such items along with, if applicable, the Facility will be situated entirely on the Real Property.

V. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.

W. It has or will promptly record a fully executed Declaration with the appropriate governmental office and deliver a copy thereof to the State Entity and to Minnesota Management and Budget (attention: Capital Projects Manager) that contains all of the recording information, unless a waiver is requested and granted, in whole or in part, under the Commissioner's Order, in which case it has or will promptly submit the certification required by the Commissioner's Order to the State Entity and to Minnesota Management and Budget.

X. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the State Entity or the Commissioner of MMB.

Section 2.06 **Ownership by Leasehold or Easement**. This Section shall only apply if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a Real Property/Facility Lease or an easement. For all other circumstances this Section is not needed and should be ignored and treated as if it were left blank, and any reference to this Section in this Agreement shall be ignored and treated as if the reference did not exist.

A. A Real Property/Facility Lease or easement must comply with the following provisions.

1. It must be in form and contents acceptable to the Commissioner of MMB, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the Commissioner of MMB.

2. It must be for a term that is equal to or greater than 125% of the Useful Life of the Real Property and, if applicable, Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. Any payments to be made under it by the Public Entity, whether designated as rent or in any other manner, must be by way of a single lump sum payment that is due and payable on the date that it is first made and entered into.

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

7. It must contain a provision that prohibits the Lessor/Grantor from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased/Easement Premises or the Lessor/Grantor's interest in the Real Property/Facility Lease or easement, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease or easement and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease or easement as if such holder had been an original Lessor/Grantor under the Real Property/Facility Lease or easement.

8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms, conditions and provisions contained in the Real Property/Facility Lease or easement.

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Public Entity's ownership interest in the Real Property/Facility Lease or easement. Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.

10. It must allow for a transfer thereof in the event that the lessee under the Real Property/Lease or grantee under the easement makes the necessary determination to sell its interest therein, and allow such interest to be transferred to the purchaser of such interest.

11. It must contain a provision that prohibits and prevents the sale of the underlying fee interest in the Real Property and, if applicable, Facility without first obtaining the written consent of the Commissioner of MMB.

12. The Public Entity must be the lessee under the Real Property/Lease or grantee under the easement.

B. The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease or easement that are not inconsistent with or contrary to the requirements contained in this Section.

C. The expiration of the term of a Real Property/Facility Lease or easement shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the G.O. Grant, and upon such expiration the Public Entity's ownership interest in the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D. The Public Entity shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease or easement, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/Facility Lease or easement or a short form or memorandum thereof.

Section 2.07 **Event(s) of Default.** The following events shall, unless waived in writing by the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the State Entity or the Commissioner of MMB giving the Public Entity 30 days written notice of such event and the Public Entity's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months unless otherwise consented to, in writing, by the State Entity and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the G.O. Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Public Entity fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

C. If the Public Entity fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the G.O. Bonding Legislation.

D. If the Public Entity fails to complete the Project, or cause the Project to be completed, by the Completion Date.

E. If the Public Entity fails to provide and expend the full amount of the matching funds, if any, required under Section 7.23 for the Project.

F. If the Public Entity fails to record the Declaration or submit the certification, as applicable, and deliver copies thereof as set forth in Section 2.05.W.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon either the State Entity or the Commissioner of MMB giving the Public Entity written notice of such event.

Section 2.08 **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the State Entity, the State Entity or the Commissioner of MMB may enforce any or all of the following remedies.

A. The State Entity may refrain from disbursing the G.O. Grant; provided, however, the State Entity may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default involves a failure to comply with any of the provisions contained herein other than the provisions of Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the G.O. Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner of MMB.

C. If the Event of Default involves a failure to comply with the provisions of Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Public Entity pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner of MMB.

D. Either the State Entity or the Commissioner of MMB, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the State Entity or the Commissioner of MMB would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained in this Agreement within 30 days of demand by the Commissioner of MMB, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of the State Entity and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 **Notification of Event of Default.** The Public Entity shall furnish to the State Entity and the Commissioner of MMB, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.10 **Survival of Event of Default.** This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.12 and at the end of its term in accordance with the provisions contained in Section 2.11.

Section 2.11 **Term of Grant Agreement.** This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Real Property and, if applicable, Facility is first used for the operation of the Governmental Program after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property and, if applicable, Facility from the effect of this Agreement and the Declaration.

Section 2.12 **Modification and/or Early Termination of Grant.** If the Project is not started on or before the date that is 5 years from the effective date of this Agreement or all of the G.O. Grant has not been disbursed as of the date that is 4 years from the date on which the Project is started, or such later dates to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the G.O. Grant shall terminate. In such event, (i) if none of the G.O. Grant has been disbursed by such dates then the State Entity's obligation to fund any portion of the G.O. Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the G.O. Grant has been disbursed by such dates then the State Entity shall have no further obligation to provide any additional funding for the G.O. Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the G.O. Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Public Entity's obligation to complete the Project by the Completion Date.

This Agreement shall also terminate and no longer be of any force or effect upon the Public Entity's sale of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of MMB in compliance with the provisions contained in Section 4.02, or upon the termination of Public Entity's ownership interest in the Real Property and, if applicable, Facility if such ownership interest is by way of an easement or under a Real Property/Facility Lease. Upon such termination the State Entity shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the Public

Entity's ownership interest in the Real Property and, if applicable, Facility, from the effect of this Agreement and the Declaration.

Section 2.13 **Excess Funds.** If the full amount of the G.O. Grant and any matching funds referred to in Section 7.23 are not needed to complete the Project, then, unless language in the G.O. Bonding Legislation indicates otherwise, the G.O. Grant shall be reduced by the amount not needed.

ARTICLE III
USE CONTRACTS

This Article III and its contents is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate any portion of the Real Property, and if applicable, Facility. For all other circumstances this Article III and its contents are not needed and should be ignored and treated as if it were left blank, and any reference to this Article III, its contents, and the term Use Contract in this Agreement shall be ignored and treated as if the references did not exist.

Section 3.01 **General Provisions.** If the Public Entity has statutory authority to enter into a Use Contract, then it may enter into Use Contracts for various portions of the Real Property and, if applicable, Facility; provided that each and every Use Contract that the Public Entity enters into must comply with the following requirements:

A. The purpose for which it was entered into must be to operate the Governmental Program in the Real Property and, if applicable, Facility.

B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into such contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the Governmental Program and must describe such program.

D. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity: (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the Governmental Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the Governmental Program (from all sources) by the Counterparty will equal or exceed expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the Public Entity will annually determine that the Counterparty is using the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract to operate the Governmental Program.

E. It must allow for termination by the Public Entity in the event of a default thereunder by the Counterparty, or in the event that the Governmental Program is

terminated or changed in a manner that precludes the operation of such program in the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.

F. It must terminate upon the termination of the statutory authority under which the Public Entity is operating the Governmental Program.

G. It must require the Counterparty to pay all costs of operation and maintenance of that portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, unless the Public Entity is authorized by law to pay such costs and agrees to pay such costs.

H. If the Public Entity pays monies to a Counterparty under a Use Contract, such Use Contract must meet the requirements of Rev. Proc. 97-13, 1997-1 CB 632, so that such Use Contract does not result in "private business use" under Section 141(b) of the Code.

I. It must be approved, in writing, by the Commissioner of MMB, and any Use Contract that is not approved, in writing, by the Commissioner of MMB shall be null and void and of no force or effect.

J. It must contain a provision requiring that each and every party thereto shall, upon direction by the Commissioner of MMB, take such actions and furnish such documents to the Commissioner of MMB as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, the Public Entity's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

L. If the amount of the G.O. Grant exceeds $200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with

state workforce centers as required by Minn. Stat. § 116L.66, as it may be amended, modified or replaced from time to time, for the term of the Use Contract.

M. It must contain a provision that clearly states that the Public Entity is not required to renew the Use Contract beyond the original term thereof and that the Public Entity may, at its sole option and discretion, allow the Use Contract to expire at the end of its original term and thereafter directly operate the governmental program in the Real Property and, if applicable, Facility or contract with some other entity to operate the governmental program in the Real Property and, if applicable, Facility.

Section 3.02 **Initial Term and Renewal.** The initial term for a Use Contract may not exceed the lesser of (i) 50% of the Useful Life of the Real Property and, if applicable, Facility for the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, or (ii) the shortest term of the Public Entity's ownership interest in the Real Property and, if applicable, Facility.

A Use Contract may allow for renewals beyond its initial term on the conditions that (a) the term of any renewal may not exceed the initial term, (b) the Public Entity must make a determination that renewal will continue to carry out the Governmental Program and that the Counterparty is suited and able to perform the functions contained in Use Contract that is to be renewed, (c) the Use Contract may not include any provisions that would require, either directly or indirectly, the Public Entity to either make the determination referred to in this Section or to renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal term, and (d) no such renewal may occur prior to the date that is 6 months prior to the date on which the Use Contract is scheduled to terminate. Provided, however, notwithstanding anything to the contrary contained herein the Public Entity's voluntary agreement to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Public Entity to renew such Use Contract.

Section 3.03 **Reimbursement of Counterparty.** A Use Contract may but need not contain, at the sole option and discretion of the Public Entity, a provision that requires the Public Entity to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty. If agreed to by the Public Entity, such reimbursement shall be on terms and conditions agreed to by the Public Entity and the Counterparty.

Section 3.04 **Receipt of Monies Under a Use Contract.** The Public Entity does not anticipate the receipt of any funds under a Use Contract, provided, however, if the Public Entity does receive any monies under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner of MMB. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner of MMB shall be

determined by the Commissioner of MMB, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the G.O. Grant and the denominator of which is sum of the G.O. Grant and the Approved Debt.

ARTICLE IV
SALE

Section 4.01 **Sale.** The Public Entity shall not sell any part of its ownership interest in the Real Property and, if applicable, Facility unless all of the following provisions have been complied with fully.

A. The Public Entity determines, by official action, that such ownership interest is no longer usable or needed for the operation of the Governmental Program, which such determination may be based on a determination that the portion of the Real Property or, if applicable, Facility to which such ownership interest applies is no longer suitable or financially feasible for such purpose.

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

D. The written consent of the Commissioner of MMB has been obtained.

The acquisition of the Public Entity's ownership interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's ownership interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates such portion of the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

The Public Entity may participate in any public auction of its ownership interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the Governmental Program.

Section 4.02 **Proceeds of Sale.** Upon the sale of the Public Entity's ownership interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale and such other costs that are approved, in writing, by the Commissioner of MMB, but not including the repayment of any debt

associated with the Public Entity's ownership interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of MMB in an amount equal to the Outstanding Balance of the G.O. Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the G.O. Grant then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 4.02A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) reimburse the Public Entity for its Ownership Value, and (iii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution (such as the State Entity under Section 4.02.A and the holders of Approved Debt paid under this Section 4.02.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing and if such entities cannot agree by an appropriately issued court order.

C. The remaining portion, after the distributions specified in Sections 4.02.A and B, shall be divided and distributed to the State Entity, the Public Entity, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such funds, in proportion to the contributions that the State Entity, the Public Entity, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to the State Entity shall be made to the Commissioner of MMB, and the Public Entity may direct its distribution to be made to any other entity including, but not limited to, a Counterparty.

All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner of MMB, and no such disbursements shall be made without such consent.

The Public Entity shall not be required to pay or reimburse the State Entity or the Commissioner of MMB for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the G.O. Grant.

ARTICLE V
COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER

Section 5.01 **State Bond Financed Property**. The Public Entity and the State Entity acknowledge and agree that the Public Entity's ownership interest in the Real Property and, if applicable, Facility is, or when acquired by the Public Entity will be, "state bond financed property", as such term is used in the G.O. Compliance Legislation and the Commissioner's

Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Public Entity's ownership interest in the Real Property and, if applicable, Facility and any Use Contracts relating thereto.

Section 5.02 **Preservation of Tax Exempt Status.** In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or, if applicable, Facility, or use or invest the G.O. Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

B. It will deposit into and hold all of the G.O. Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner of MMB all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the G.O. Bonds.

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the G.O. Bonds to no longer be tax exempt and upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the G.O. Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor omit to take any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 **Changes to G.O. Compliance Legislation or the Commissioner's Order.** In the event that the G.O. Compliance Legislation or the Commissioner's Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity's ownership interest in the Real Property or, if applicable, Facility is exempt from the G.O.

Compliance Legislation and the Commissioner's Order, then upon written request by the Public Entity the State Entity shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Public Entity's ownership interest in the Real Property and, if applicable, Facility from the G.O. Compliance Legislation or the Commissioner's Order.

ARTICLE VI
DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 **The Advances**. The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the G.O. Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the G.O. Grant. If the amount of G.O. Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the G.O. Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the G.O. Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire G.O. Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature for the Project, (ii) accrued no earlier than the effective date of the G.O. Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the State Entity and the Commissioner of MMB.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 7.23. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 7.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1

Cumulative Advances $\leq$ (G.O. Grant) $\times$ (percentage of matching funds, if any, required under Section 7.23 that have been disbursed)

Formula #2

Cumulative Advances $\leq$ (G.O. Grant) $\times$ (percentage of Project completed)

Section 6.02 **Draw Requisitions.** Whenever the Public Entity desires a disbursement of a portion of the G.O. Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition shall be submitted on or between the 1st day and the 15th day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days before the date the Advance is desired. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the

work by percentage of completion as approved by the Public Entity and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off the Real Property will be made by the State Entity unless the Public Entity shall advise the State Entity, in writing, of its intention to so store materials prior to their delivery and the State Entity has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Public Entity shall submit to the State Entity such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

At the time of submission of the final Draw Requisition which shall not be submitted before completion of the Project, including all landscape requirements and off-site utilities and streets needed for access to the Real Property and, if applicable, Facility and correction of material defects in workmanship or materials (other than the completion of punch list items) as provided in the Construction Contract Documents, the Public Entity shall submit to the State Entity: (i) such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and other approvals have been issued.

If on the date an Advance is desired the Public Entity has complied with all requirements of this Agreement and the State Entity approves the relevant Draw Requisition and receives a current construction report from the Inspecting Engineer recommending payment, then the State Entity shall disburse the amount of the requested Advance to the Public Entity.

Section 6.03 **Additional Funds.** If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the G.O. Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then the State Entity may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the State Entity's notice.

Section 6.04 **Condition Precedent to Any Advance.** The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

A. The State Entity shall have received a Draw Requisition for such Advance specifying the amount of funds being requested, which such amount when added to all prior

requests for an Advance shall not exceed the amount of the G.O. Grant delineated in Section 1.01.

B. The State Entity shall have either received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon, or evidence that such Declaration will promptly be recorded and delivered to the State Entity, or received a certification required by the Commissioner's Order if a waiver to the Declaration requirement has been granted by Minnesota Management and Budget, or evidence that such certification will promptly be submitted to the State Entity.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Public Entity has legal authority to and has taken all actions necessary to enter into this Agreement and the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Public Entity.

D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.

E. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity is in compliance with the matching funds requirements, if any, contained in Section 7.23.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Public Entity possesses the ownership interest delineated in Section 2.02.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, Facility, and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and, if required by law, have been duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits,

bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Project will be completed in a manner that will allow the Real Property and, if applicable, Facility to be operated in the manner specified in Section 2.04.

K. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has the ability and a plan to fund the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04.

L. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the insurance requirements under Section 7.01 have been satisfied.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, of compliance with the provisions and requirements specified in Section 7.10 and all additional applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that: (i) the predesign package referred to in Section 7.10.B has, if required, been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 7.10.C have, if required, received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair of the Minnesota House of Representatives Capital Investment Committee has, if required, been notified pursuant to Section 7.10.G.

N. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

O. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefor, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name the State Entity and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and the State Entity.

P. No determination shall have been made by the State Entity that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or

if such a determination has been made and notice thereof sent to the Public Entity under Section 6.03, then the Public Entity has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to the State Entity that sufficient funds are available.

Q. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require.

Section 6.05 **Construction Inspections.** The Public Entity and the Architect, if any, shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Public Entity or the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the State Entity, and the Public Entity will not rely thereon.

ARTICLE VII
MISCELLANEOUS

Section 7.01 **Insurance.** The Public Entity shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof (i) by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Public Entity, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the State Entity under which the State Entity and the Public Entity are named as loss payees. If damages which are covered by such required insurance occur, then the Public Entity shall, at its sole option and discretion, either: (y) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (z) sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

If the Public Entity elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the Real Property and Facility. If the Public Entity elects to sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the

insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

The State Entity agrees to and will assign or pay over to the Public Entity all insurance proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes thereon as to the use of such insurance proceeds.

If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property and, if applicable, Facility, then the Public Entity shall have the State Entity named as an additional named insured therein.

The Public Entity may require a Counterparty to provide and maintain any or all of the insurance required under this Section; provided that the Public Entity continues to be responsible for the providing of such insurance in the event that the Counterparty fails to provide or maintain such insurance.

At the written request of either the State Entity or the Commissioner of MMB, the Public Entity shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Public Entity regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Public Entity fails to provide and maintain the insurance required under this Section, then the State Entity may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by the State Entity to obtain or maintain such insurance shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365-day year. Provided, however, nothing contained herein, including but not limited to this Section, shall require the State Entity to obtain or maintain such insurance, and the State Entity's decision to not obtain or maintain such insurance shall not lessen the Public Entity's duty to obtain and maintain such insurance.

Section 7.02 **Condemnation.** If after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its ownership interest in the portion of the

Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As recipient of any of condemnation awards or proceeds referred to herein, the State Entity agrees to and will disclaim, assign or pay over to the Public Entity all of such condemnation awards or proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes upon the Public Entity as to the use of such condemnation awards or proceeds.

Section 7.03 **Use, Maintenance, Repair and Alterations.** The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's ownership interest in the Real Property and, if applicable, Facility, is a leasehold interest, (vi) comply with the provisions of any easement if its ownership interest in the Real Property and, if applicable, Facility is by way of such easement, and (vii) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use contract.

The Public Entity shall not, without the written consent of the State Entity and the Commissioner of MMB, (a) permit or suffer the use of any of the Real Property or, if applicable, Facility, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Real Property or, if applicable, Facility, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property or, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the Governmental Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or, if applicable, Facility, (d) abandon the Real Property or, if applicable, Facility, (e) commit or permit any waste or deterioration of the Real Property or, if applicable, Facility, (f) remove any fixtures or personal property from the Real Property or, if applicable, Facility, that was paid for with the proceeds of the G.O. Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the State Entity may perform

whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers the State Entity to enter upon the Real Property and, if applicable, Facility, to perform such acts as may to necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or funds expended by the State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the State Entity to perform such acts as may to necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

Section 7.04 **Record Keeping and Reporting.** The Public Entity shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and, if applicable, Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Public Entity shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and, if applicable, Facility for a period of 6 years from the date such operation is initiated.

Section 7.05 **Inspections by State Entity.** Upon reasonable request by the State Entity and without interfering with the normal use of the Real Property and, if applicable, Facility, the Public Entity shall allow and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, Facility to allow the State Entity to inspect the Real Property and, if applicable, Facility.

Section 7.06 **Data Practices.** The Public Entity agrees with respect to any data that it possesses regarding the G.O. Grant, the Project, or the operation of the Real Property and, if applicable, Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.07 **Non-Discrimination.** The Public Entity agrees to not engage in discriminatory employment practices regarding the Project, or operation or management of the Real Property and, if applicable, Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.08 **Worker's Compensation.** The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181 subd. 2 and 176.182, as they may be amended, modified or replaced from time to time, with respect to the Project and the operation or management of the Real Property and, if applicable, Facility.

Section 7.09 **Antitrust Claims.** The Public Entity hereby assigns to the State Entity and the Commissioner of MMB all claims it may have for overcharges as to goods or services provided with respect to the Project, and operation or management of the Real Property and, if applicable, Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 7.10 **Review of Plans and Cost Estimates.** The Public Entity agrees to comply with all applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Public Entity agrees to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Public Entity shall provide all information that the State Entity may request in order for the State Entity to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project the Public Entity shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair of the Minnesota House of Representatives Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Public Entity must notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee of any significant changes to the program plan and cost estimates referred to in Section 7.10.C.

E. The program plan and cost estimates referred to in Section 7.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20, as they may be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the G.O. Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Public Entity shall just notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee that the work to be performed is ready to begin.

H. The Project must be: (i) substantially completed in accordance with the program plan and cost estimates referred to in Section 7.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 7.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 7.10.C.

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04, as it may be amended, modified or replaced from time to time, ice arenas, local government projects with a construction cost of less than $1,500,000.00, or any other capital project with a construction cost of less than $750,000.00.

Section 7.11 **Prevailing Wages.** The Public Entity agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the Governmental Program on or in the Real Property and, if applicable, Facility. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the Governmental Program on or in the Real Property and, if applicable, Facility.

Section 7.12 **Liability.** The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Public Entity is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

Section 7.13 **Indemnification by the Public Entity.** The Public Entity shall bear all loss, expense (including attorneys' fees), and damage in connection with the Project and operation of the Real Property and, if applicable, Facility, and agrees to indemnify and hold harmless the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the State Entity, the Commissioner of MMB, or the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Project or operation of the Real Property and, if applicable, Facility, whether or not due to any act of omission or commission, including negligence of the Public Entity or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner of MMB, or the State of Minnesota, their employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

The Public Entity's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusions from coverage in any insurance policy.

Section 7.14 **Relationship of the Parties.** Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Public Entity, the State Entity, or the Commissioner of MMB, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee of the State Entity, the Commissioner of MMB, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property and, if applicable, Facility.

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and

maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with the State Entity, the Commissioner of MMB, or the State of Minnesota, and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of the State Entity, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the State Entity, the Commissioner of MMB, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 7.15 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity at:

City of Duluth
411 West First Street
Room 402 City Hall
Duluth, MN 55802
Attn: Chris Eng, Director of Business and Economic Development

To the State Entity at:

Minnesota Department of Employment and Economic Development
First National Bank Building
332 Minnesota Avenue
Suite E200
St. Paul, MN 55101
Attention: Emily A. Johnson

To the Commissioner of MMB at:

Minnesota Department of Management and Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

Section 7.16 **Binding Effect and Assignment or Modification.** This Agreement and the Declaration shall be binding upon and inure to the benefit of the Public Entity and the State Entity, and their respective successors and assigns. Provided, however, that neither the Public Entity nor the State Entity may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Public Entity or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 7.17 **Waiver.** Neither the failure by the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 7.18 **Entire Agreement.** This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Public Entity and the State Entity, and there are no other agreements, either oral or written, between the Public Entity and the State Entity on the subject matter hereof.

Section 7.19 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 7.20 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.21 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.22 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.23 **Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the Project: $8,500,000. Any matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have

been or will be used to pay for the Project. The Public Entity shall supply to the Commissioner of MMB whatever documentation the Commissioner of MMB may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner of MMB.

Section 7.24 **Source and Use of Funds.** The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down among the following categories:

(i) State funds including the G.O. Grant, identifying the source and amount of such funds.

(ii) Matching funds, identifying the source and amount of such funds.

(iii) Other funds supplied by the Public Entity, identifying the source and amount of such funds.

(iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.

(v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

Previously paid project expenses that are to be reimbursed and paid from proceeds of the G.O. Grant may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner of MMB.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Public Entity must provide to the State Entity and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

The Public Entity shall also supply whatever other information and documentation that the State Entity or the Commissioner of MMB may request to support or explain any of the information contained in **Attachment III**.

The value of the Public Entity's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment III** if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such

value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

The funds shown in **Attachment III** and to be supplied for the Project may, subject to any limitations contained in the G.O. Bonding Legislation, be provided by either the Public Entity or a Counterparty under a Use Contract.

Section 7.25 **Project Completion Schedule.** The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment IV** correctly and accurately delineates the projected schedule for the completion of the Project.

Section 7.26 **Third-Party Beneficiary.** The Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 7.27 **Public Entity Tasks**. Any tasks that this Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 7.28 **State Entity and Commissioner Required Acts and Approvals.** The State Entity and the Commissioner of MMB shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

Section 7.29 **Applicability to Real Property and Facility.** This Agreement applies to the Public Entity's ownership interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing in conjunction with the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Public Entity's ownership interest in the Real Property.

Section 7.30 **E-Verification.** The Public Entity agrees and acknowledges that it is aware of Governor's Executive Order 08-01 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such order and impose a similar requirement in any Use Contract to which it is a party.

Section 7.31 **Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

A. Section 1.01 – **Defined Terms, Additional Definitions**. The following definitions shall be added to Section 1.01 Defined Terms:

"DRE LLC" – means Duluth Real Estate LLC, a Delaware limited liability company with its principal offices located at 105 West Superior Street, Duluth, Minnesota 55802, its successors and assigns.

"Ground Lease" – means that certain Ground Lease between DRE LLC, as Ground Lessor, and the City of Duluth, as Ground Lessee, of substantially even date herewith, as the same may be amended from time to time.

"McGough" – means McGough Construction, a contractor licensed in the State of Minnesota.

"Parking Contract" – means an agreement or license pursuant to which a person or entity gains the right to park (or to have its employees or other designated persons park) in the Parking Facility, whether on a transient (daily or hourly) or contract (monthly or other) basis.

B. Section 1.01 – **Defined Terms, Definition for Approved Debt**. The definition for Approved Debt in Section 1.01 shall be modified as follows (deletions are shown as ~~strikethrough~~ and additions are shown as <u>underlined</u>):

"Approved Debt" – means public or private debt of the Public Entity <u>or DRE LLC (if any)</u> that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will <u>be</u> used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner of MMB is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

C. Section 1.01 – **Defined Terms, Definitions for Initial Acquisition and Betterment Costs and Subsequent Betterment Costs**. The definitions for Initial Acquisition and Betterment Costs and Subsequent Betterment Costs in Section 1.01 shall be modified as follows (deletions are shown as ~~strikethrough~~ and additions are shown as <u>underlined</u>):

"Initial Acquisition and Betterment Costs" – means the cost to acquire the Public Entity's ownership interest in the Real Property and, if applicable, Facility if the Public Entity does not already possess the required ownership interest, and the <u>Public Entity's and/or DRE LLC's</u> costs of betterments of the Real Property and, if applicable, Facility; provided, however, the Commissioner of MMB is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount. <u>Such costs of betterment shall be attributed to the entity that provided the funds to pay for such costs.</u>

"Subsequent Betterment Costs" – means the <u>Public Entity's and/or DRE LLC's</u> costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term in used in Minn. Constitution

Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the State Entity and the Commissioner of MMB. Such costs of betterment shall be attributed to the entity that provided the funds to pay for such costs.

D. Section 1.01 – **Defined Terms, Definitions of Use Contract**. The definition for Use Contract in Section 1.01 shall be modified as follows (deletions are shown as ~~strikethrough~~ and additions are shown as underlined):

"Use Contract" - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the Real Property and/or, if applicable, Facility. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property and/or, if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.* For the avoidance of doubt, a Parking Contract does not constitute a Use Contract.

E. Section 1.01 – **Useful Life of the Real Property and, if applicable, Facility.** The Public Entity represents that the Useful Life of the Real Property and, if applicable, Facility is forty (40) years from the completion of construction or betterment of the Facility.

F. Section 2.05 – **Public Entity Representations and Warranties**. The following representation and warranty shall be added to Section 2.05:

Y. It will operate, or cause to be operated, the Project funded by the G.O. Grant and subject to the Declaration as a public parking ramp which will be available to individual members of the general public on an hourly, daily or monthly contract basis on a first-come, first-serve basis, with no preferential or disparate treatment of any type being accorded to any person or entity. For the avoidance of doubt, volume purchases or bulk purchases of monthly parking contracts is not permitted, without the prior written consent of the State Entity and the Commissioner of MMB.

G. Section 2.06 – **Ownership by Leasehold or Easement**. The language contained in Sections 2.06.A.7, 2.07.A.9 and 2.06.A.11 shall be modified as follows (deletions are shown as ~~strikethrough~~ and additions are shown as underlined):

7. It must contain a provision that prohibits the Lessor/Grantor from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased/Easement Premises or the Lessor/Grantor's interest in the Real Property/Facility Lease or easement, ~~whether~~ unless such lien or encumbrance ~~is superior or subordinate to the Declaration~~ (a) encumbers the Lessor/Grantor's fee interest in the Leased/Easement Premises, and is subordinate to (or does not encumber) the Public Entity's interest in the Leased/Easement Premises, and (b) is subordinate to the Declaration. Provided, however, the State Entity and the

Commissioner of MMB will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease or easement and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease or easement, as if such holder had been an original Lessor/Grantor under the Real Property/Facility Lease or easement.

9. It must provide that any use restrictions imposed by this Agreement and contained therein (but not including any operating covenants relating to the manner in which the Facility is to be operated as a parking facility) only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Public Entity's ownership interest in the Real Property/Facility Lease or easement. Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.

11. It must contain a provision that prohibits and prevents the sale of the underlying fee interest in the Real Property and, if applicable, Facility without first obtaining the written consent of the Commissioner of MMB, except that a sale of the underlying fee interest in the Real Property shall not be prohibited or require the written consent of the Commissioner of MMB if such sale does not affect the Public Entity's (a) interest in the Leased/Easement Premises, or (b) rights under the Ground Lease, provided, the Public Entity shall cause notice of any such sale to be promptly supplied to the Commissioner of MMB together with copies of transfer documents with respect thereto, as may be reasonably requested by the Commissioner of MMB.

H. Section 2.12 – **Modifications and/or Early Termination of Grant**. The language contained in Section 2.12 shall be modified as follows (deletions are shown as ~~strikethrough~~ and additions are shown as underlined):

Section 2.12 **Modification and/or Early Termination of Grant.** If the Project is not started on or before the date that is 5 years from the effective date of this Agreement or all of the G.O. Grant has not been disbursed as of the date that is 4 years from the date on which the Project is started, or such later dates to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the G.O. Grant shall terminate. In such event, (i) if none of the G.O. Grant has been disbursed by such dates then the State Entity's obligation to fund any portion of the G.O. Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the G.O. Grant has been disbursed by such dates then the State Entity shall have no further obligation to provide any additional funding for the G.O. Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the G.O. Grant that was actually disbursed as of such date. This provision shall not, in

any way, affect the Public Entity's obligation to complete the Project by the Completion Date.

This Agreement shall also terminate and no longer be of any force or effect upon: (i) the Public Entity's sale of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of MMB in compliance with the provisions contained in Section 4.02, or (ii) upon the termination of Public Entity's ownership interest in the Real Property and, if applicable, Facility if such ownership interest is by way of an easement or under a Real Property/Facility Lease. Upon such termination the State Entity shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the ~~Public Entity's ownership interest in the~~ Real Property and, if applicable, Facility, including the Public Entity's ownership interest therein, from the effect of this Agreement and the Declaration.

I. Section 3.04 – **Receipt of Monies Under a Use Contract.** The language contained in Section 3.04 shall be modified as follows (deletions are shown as ~~strikethrough~~ and additions are shown as underlined):

Section 3.04 – **Receipt of Monies Under a Use Contract.** The Public Entity does not anticipate the receipt of any funds under a Use Contract, provided, however, if the Public Entity does receive any monies under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner of MMB. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner of MMB shall be determined by the Commissioner of MMB, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the G.O. Grant and the denominator of which is sum of the G.O. Grant and the Approved Debt. For purposes of this Section 3.04, revenues derived from a Parking Contract shall not be considered funds received from a Use Contract as described above.

J. Section 4.02 - **Proceeds of Sale.** The language contained in Section 4.02 shall be modified as follows (deletions are shown as ~~strikethrough~~ and additions are shown as underlined):

Section 4.02 **Proceeds of Sale.** Upon the sale of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale and such other costs that are approved, in writing, by the Commissioner of MMB, (but not including the repayment of any debt associated with the Public Entity's ownership interest in the Real Property and, if applicable, Facility), shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of MMB in an amount equal to the Outstanding Balance of the G.O. Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the G.O. Grant then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 4.02A, shall be distributed ~~to~~ (i) first, to pay in full any outstanding Approved Debt, (ii) next, to reimburse the Public Entity for its Ownership Value, and (iii) finally, to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution (such as the State Entity under Section 402.A and the holders of Approved Debt paid under this Section 4.02.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing and if such entities cannot agree by an appropriately issued court order.

C. The remaining portion, after the distributions specified in Sections 4.02.A and B, shall be divided and distributed to the State Entity, the Public Entity, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such funds, in proportion to the contributions that the State Entity, the Public Entity, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to the State Entity shall be made to the Commissioner of MMB, and the Public Entity may direct its distribution to be made to any other entity including, but not limited to, a Counterparty.

All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner of MMB, and no such disbursements shall be made without such consent.

The Public Entity shall not be required to pay or reimburse the State Entity or the Commissioner of MMB for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the G.O. Grant.

K. Section 6.01 - **The Advances.** Section 6.01 shall be modified as follows, with deletions shown as ~~strikethroughs~~ and additions shown as underlined:

The State Entity agrees, on the terms and subject to the conditions set forth herein, and in that certain Disbursing Agreement (the "Disbursing Agreement") of

even date herewith entered into by and amongst the State Entity, the Public Entity, DRE LLC, and First American Title Insurance Company, to make Advances from the G.O. Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the G.O. Grant. If the amount of G.O. Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the G.O. Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the G.O. Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire G.O. Grant has not been disbursed by such dates. In the event of any conflict between the provisions contained in this Agreement and in such Disbursing Agreement, the provisions contained in this Agreement shall control.

Advances shall only be for expenses that (i) are for those items of a capital nature for the Project, (ii) accrued no earlier than the effective date of the G.O. Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the State Entity and the Commissioner of MMB.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 7.23. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 7.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formula~~s~~:

Formula #1
Cumulative Advances $\leq$ (G.O. Grant) $\times$ (percentage of matching funds, if any, required under Section 7.23 that have been disbursed~~)~~

Formula #2
Cumulative Advances $\leq$ (G.O. Grant) $\times$ (percentage of Project completed)

L. Section 6.04 – **Conditions Precedent to Any Advance**. The parties acknowledge that Section 6.04.M does not apply to the Project, as it is exempt under Minn. Stat. §16B.335, Subd. 1(b).

M. Section 6.05 – **Construction Inspections**. The language contained in Section 6.05 shall be modified as follows, with deletions shown as ~~strikethroughs~~ and additions shown as underlined:

Section 6.05 – **Construction Inspections.** The Public Entity, DRE LLC, and (to the extent directed by DRE LLC) ~~and~~ the Architect, if any, shall be responsible for

making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Public Entity, DRE LLC or the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the State Entity, and the Public Entity will not rely thereon.

N. Section 7.10 – **Review of Plans and Cost Estimates**. The parties acknowledge that Section 7.10 does not apply to the Project, as it is exempt under Minn. Stat. §16B.335, Subd. 1(b).

O. Section 7.24 – **Source and Use of Funds**. The first paragraph of Section 7.24 shall be modified as follows, with deletions shown as ~~strikethroughs~~ and additions shown as underlined:

Section 7.24 – **Sources and Uses of Funds.** The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project (and the Additional Public Improvements, as defined in the Disbursing Agreement) and all of the funds that are available for the completion of the Project and the Additional Public Improvements, and that the information contained in such **Attachment III** correctly and accurately delineates the following information:

A. The total cost of the Project and the Additional Public Improvements detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project and the Additional Public Improvements, broken down among the following categories:

(i) State funds including the G.O. Grant, identifying the source and amount of such funds.

(ii) Matching funds, identifying the source and amount of such funds.

(iii) Other funds supplied by the Public Entity, identifying the source and amount of such funds.

(iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.

(v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project and the Additional Public Improvements, the source of such funds and the expected use of such funds.

P. **Construction/Renovation of Facility.** The Public Entity has or will contract with DRE LLC to construct the Facility, and DRE LLC has or will further contract with McGough to perform such construction.

Q. **Amendments.** No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, and signed by the Public Entity and the State Entity, and specifying with particularity the extent and nature of such amendment, modification, or waiver. The Public Entity will provide DRE LLC with notice of all amendments and modifications of this Agreement within five business days' of the full execution thereof.

R. **Legal Description; Amendment**. The legal descriptions of the Real Property on Attachment II to this Agreement and Exhibit A to the Declaration were prepared based upon plans and specifications for the Facility. Upon substantial completion of the structural elements of the Facility, (i) the Public Entity and DRE LLC shall cause a revised legal description to be prepared in accordance with Section 8.6 of the Ground Lease, and (ii) the Public Entity, the State Entity and DRE LLC (as appropriate based on the applicable document) shall execute amendments to the Ground Lease, the short-form thereof, this Agreement and (subject to the prior written consent of the Commissioner of MMB as provided therein) the Declaration, which amendments shall revise the current legal description of the Real Property (which is, for clarity, referred to as "Parking Facility Parcel" in the Ground Lease) to conform to the revised Real Property legal description. The Public Entity and DRE LLC shall then cause the amendments to the short-form Ground Lease and Declaration to be recorded with the appropriate recording offices in St. Louis County, Minnesota.

S. **Minnesota Report on Jobs Requirements.** Pursuant to Minnesota Statute 16A.633, Subdivision 4 (MN Laws of 2012 Chapter 293, Section 28), the Public Entity shall collect, maintain and, upon completion of the Project, provide the information indicated in Attachment V of this Agreement, to the Commissioner of MMB. The information must include, but is not limited to, the following: the number and types of jobs created by the Project, whether the jobs are new or retained, where the jobs are located and the pay ranges of the jobs.

US.53589289.10

[THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the 425 Public Parking Facility Project on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

CITY OF DULUTH,
a Minnesota Municipal Corporation

By: _____
Don Ness

Its: Mayor

Dated: _____, 2014

And: _____
Jeffrey J. Cox

Its: City Clerk

Dated: _____, 2014

Approved:

_____
City Attorney

Countersigned:

_____
City Auditor

STATE ENTITY:

_____,

By: _____

_____

Its: _____

Dated: _____, _____

Attachment I to Grant Agreement

State of Minnesota
General Obligation Bond Financed
DECLARATION

The undersigned has the following interest in the real property located in the County of St. Louis, State of Minnesota that is legally described in **Exhibit A** attached:

(Check the appropriate box.)

☐ a fee simple title,

☒ a lease, or

☐ an easement,

and as owner of such fee title, lease or easement, and all facilities situated thereon (collectively referred to as the "Restricted Property") does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in paragraph B below, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, or its successor, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and

B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain General Obligation Bond Proceeds-Grant Agreement—Construction Grant for the 425 Public Parking Facility Project between the City of Duluth and Minnesota Management and Budget, dated _____, 2014 (the "G.O. Grant Agreement").

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget, at which time it shall be released therefrom by way of a written release in recordable form signed by both the Commissioner of Minnesota Department of Employment and Economic Development and the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota Management and Budget.

The legal description attached hereto was prepared based upon plans and specifications for the Restricted Property. Upon substantial completion of the structural elements of the Restricted Property, the undersigned and Duluth Real Estate LLC ("DRE LLC"), the fee owner of the Restricted Property, will cause a revised legal description to be prepared in accordance with Section 8.6 of the Ground Lease dated substantially of even date herewith between the undersigned and DRE LLC. Following preparation of the revised legal description of the Restricted Property, and upon receipt of the prior written consent of the Commissioner of Minnesota Management and Budget, the Public Entity shall amend this Declaration to reflect the revised legal description, and shall cause such amendment to be recorded with the appropriate recording offices in St. Louis County, Minnesota.

(SIGNATURE BLOCK, ACKNOWLEDGMENTS, AND STATEMENT AS TO WHOM IT WAS DRAFTED BY.)

CITY OF DULUTH

By:_____
Its Mayor

By:_____
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ___ day of _____, 2008, by Don Ness and Jeffrey J. Cox, the Mayor and City Clerk respectively, of the City of Duluth.

_____
Notary

NOTARIAL STAMP OR SEAL

This instrument was drafted by:
Robert E. Asleson,
Assistant City Attorney
411 West First Street
Room 410 City Hall
Duluth, MN 55802
218-730-5490

Exhibit A to Declaration
LEGAL DESCRIPTION OF RESTRICTED PROPERTY

Tract 1 (Elevators on First Floor of the Development, as defined in the G.O. Grant Agreement)

That portion of Lots 65, 67, 69, 71, 73, 75, 77 and that part of Lot 79 lying northeasterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota (the "Development Parcel"), described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 635.0 feet to elevation 652.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 2 (Elevators on Second Floor of the Development)

That portion of the Development Parcel described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 652.0 feet to elevation 668.67 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 3 (Third Floor of the Development)

That portion of the Development Parcel described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36

minutes 51 seconds West a distance of 15.24 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 114.99 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 15.04 feet; thence South 71 degrees 57 minutes 56 seconds East a distance of 31.28 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 9.48 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 32.83 feet; thence North 71 degrees 51 minutes 56 seconds West a distance of 27.95 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.65 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 211.09 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 668.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 4 (Floors Four through Six of the Development)

That portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 334.19 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West

a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of

32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 679.0 feet to elevation 713.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 5 (Top of Elevator Shaft on Seventh Floor of the Development)

That portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, 67 & 69, a distance of 127.50 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 54.18 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 14.76 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 5.00 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.76 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.23 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.52 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.23 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 713.0 feet to elevation 730.34 feet, National Geodetic Vertical Datum, 1929 adjustment.

Attachment II to Grant Agreement
LEGAL DESCRIPTION OF REAL PROPERTY

Tract 1 (Elevators on First Floor of the Development)

That portion of Lots 65, 67, 69, 71, 73, 75, 77 and that part of Lot 79 lying northeasterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota (the "Development Parcel"), described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 635.0 feet to elevation 652.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 2 (Elevators on Second Floor of the Development)

That portion of the Development Parcel described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 652.0 feet to elevation 668.67 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 3 (Third Floor of the Development)

That portion of the Development Parcel described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36

minutes 51 seconds West a distance of 15.24 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 114.99 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 15.04 feet; thence South 71 degrees 57 minutes 56 seconds East a distance of 31.28 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 9.48 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 32.83 feet; thence North 71 degrees 51 minutes 56 seconds West a distance of 27.95 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.65 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 211.09 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 668.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 4 (Floors Four through Six of the Development)

That portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 334.19 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West

a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of

32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 679.0 feet to elevation 713.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 5 (Top of Elevator Shaft on Seventh Floor of the Development)

That portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, 67 & 69, a distance of 127.50 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 54.18 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 14.76 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 5.00 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.76 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.23 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.52 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.23 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 713.0 feet to elevation 730.34 feet, National Geodetic Vertical Datum, 1929 adjustment.

Attachment III to Grant Agreement

SOURCE AND USE OF FUNDS FOR THE PROJECT (p. 1 of 2)

Source of Funds:

Identify Source of Funds	**Amount**	**Subtotals/Total**
State G.O. Funds		
G.O. Grant	$8,500,000	
Other State Funds		
N/A	$0	
Subtotal		**$8,500,000**
Matching Funds		
City Revenue Bond Funds*	$11,500,000	
Subtotal		**$11,500,000**
Other Public Entity Funds		
N/A	$0	
Subtotal	$0	
Loans		
N/A	$0	
Subtotal	$0	
Other Funds		
N/A	$0	
Subtotal	$0	
Prepaid Project Expenses		
	$0	
Subtotal	$0	
TOTAL FUNDS		**$20,000,000**

*Constitutes Approved Debt

Attachment III to Grant Agreement

SOURCE AND USE OF FUNDS FOR THE PROJECT (p. 2 of 2)

Use of Funds:

Identify Items	**Amount**	**Subtotals/Total**
Ownership Acquisition		
and Other Items Paid for		
with G.O. Grant Funds		
Purchase of Ownership Interest and Project Design and Construction	$8,500,000	
other	$0	
Subtotal		**$8,500,000**
Items Paid for with		
Non- G.O. Grant Funds		
Purchase of Ownership Interest and Project Design and Construction	$8,642,053	
Additional Public Improvements (as defined in Disbursing Agreement)	$2,847,038	
Subtotal		**$11,489,091**
TOTAL PROJECT COSTS*		**$19,989,091**

* Includes Additional Public Improvement Costs, as defined in the Disbursing Agreement.

Attachment IV to Grant Agreement
PROJECT COMPLETION SCHEDULE

Activity ID	Activity Name	Original Duration	Start	Finish
maurices Headquarters & City of Duluth Parking Ramp		**583d**	**01/06/14 A**	**04/22/16**
Preconstruction		234d	01/06/14 A	12/04/14
Design - RSP (Core & Shell)		202d	01/06/14 A	10/17/14
A1100	Construction Documents	202d	01/06/14 A	10/17/14
A323D	Construction Documents - CP-2 (Sitework,Utilities, SOG, Substructure)	0d	05/16/14	
A103D	Construction Documents - CP-3 (Ramp Structure & Exterior, Mill Order, Ramp MEP)	0d	06/13/14	
A322D	Construction Documents - CP-4 (Tower Structure & Exterior, Interiors)	0d	05/15/14	
A105D	Construction Documents - CP-5 (DNT)	0d	05/16/14	
A117D	Construction Documents - CP-6 (Interior Fit-Up)	0d	10/17/14	
Budget		162d	03/03/14 A	11/14/14
A120D	Design Development Budget	20d	03/03/14 A	03/28/14 A
A121D	Bid/Award CP-1	15d	03/03/14 A	03/21/14 A
A123D	Establish GMP	15d	03/31/14 A	04/18/14
A324D	Bid/Award CP-2	20d	05/19/14	06/16/14
A112D	Bid/Award CP-3	20d	06/16/14	07/14/14
A114D	Bid/Award CP-4	20d	06/18/14	05/15/14
A113D	Bid/Award CP-5	20d	09/16/14	10/13/14
A115D	Bid/Award CP-6	20d	10/20/14	11/14/14
Owner		131d	04/21/14	10/23/14
A130D	Review/Approve GMP	5d	04/21/14	04/25/14
A325D	Review/Approve CD's - CP-2	5d	06/16/14	06/22/14
A125D	Review/Approve CD's - CP-3	5d	06/13/14	06/19/14
A126D	Review/Approve CD's - CP-4	5d	06/15/14	06/21/14
A131D	Review/Approve CD's - CP-5	5d	05/15/14	05/19/14
A142D	Review/Approve CD's - CP-6	5d	10/17/14	10/23/14
Design Public Approvals		162d	03/03/14 A	11/14/14
A389D	Duluth Historic District/SHPO	20d	03/03/14 A	03/28/14 A
A391D	Building Department Review - CP-1	20d	03/03/14 A	03/28/14 A
A397D	Duluth Public Works Review - CP-1	20d	03/03/14 A	03/28/14 A
A390D	Duluth Historic District/SHPO	20d	05/19/14	06/16/14
A392D	Building Department Review - CP-2	20d	05/19/14	06/16/14
A398D	Duluth Public Works Review - CP-2	20d	05/19/14	06/16/14
A393D	Building Department Review - CP-3	20d	06/16/14	07/14/14
A399D	Duluth Public Works Review - CP-3	20d	06/16/14	07/14/14
A394D	Building Department Review - CP-4	20d	06/18/14	05/15/14
A400D	Duluth Public Works Review - CP-4	20d	06/18/14	05/15/14
A395D	Building Department Review - CP-5	20d	09/16/14	10/13/14
A401D	Duluth Public Works Review - CP-5	20d	09/16/14	10/13/14
A396D	Building Department Review - CP-6	20d	10/20/14	11/14/14
A402D	Duluth Public Works Review - CP-6	20d	10/20/14	11/14/14
City of Duluth/Permits		168d	03/31/14 A	11/14/14
A190D	Apply for Demolition Permit	5d	03/31/14 A	03/27/14 A
A129D	Apply For Permit - Site, Fdns, Fdns	20d	06/19/14	06/16/14
A132D	Apply For Permit - Parking Ramp	20d	06/13/14	07/11/14
A133D	Apply For Permit - Building (Core & Shell)	20d	06/18/14	05/15/14
A134D	Apply For Permit - DNT	20d	09/16/14	10/13/14

Activity ID	Activity Name	Original Duration	Start	Finish
A1400	Apply For Permit - Interior Fit-Up	20d	10/20/14	11/14/14
Procurement		94d	03/03/14 A	07/14/14
A365D	Fire Protection	20d	03/03/14 A	03/28/14 A
A366D	Mechanical	20d	03/03/14 A	03/28/14 A
A367D	Electrical	20d	03/03/14 A	03/28/14 A
A376D	Structural Steel Supply - M/I Order	20d	05/16/14	07/14/14
A377D	Stairs	20d	05/16/14	07/14/14
A378D	Parking Ramp Equipment	20d	05/16/14	07/14/14
A379D	Loading Dock Equipment	20d	05/16/14	07/14/14
A380D	Aluminum, Glass, Glazing	20d	05/16/14	07/14/14
A381D	Revolving Door	20d	05/16/14	07/14/14
A382D	Precast	20d	05/16/14	07/14/14
A383D	Decorative Metal Screening	20d	05/16/14	07/14/14
A384D	Elevators	20d	05/16/14	07/14/14
Long Lead		136d	05/06/14	12/04/14
A149D	Concrete Mixes	20d	05/06/14	07/03/14
A150D	Rebar Shop Drawings/Fab/Deliver	40d	05/06/14	06/31/14
A151D	PT Cables Shop Drawings/Fab/Deliver	60d	05/17/14	09/10/14
A388D	Elevator Pit Shop Dwgs	30d	05/17/14	07/29/14
A135D	Structural Steel Shop Dwgs/Fab/Deliver	70d	07/15/14	10/21/14
A136D	Precast Panels Shop Dwgs/Fab/Deliver	80d	07/15/14	11/04/14
A137D	Windows/Curtainwall Shop Dwgs/Fab/Deliver	80d	07/15/14	11/04/14
A138D	Elevator Shop Dwgs/Fab/Deliver	100d	07/15/14	12/04/14
A141D	Precast Embeds Shop Drawings	40d	07/15/14	09/09/14
A143D	Windows/Curtainwall Embeds Shop Drawings	40d	07/15/14	09/09/14
A144D	Stairs Shop Drawings	50d	07/15/14	10/07/14
A145D	Dock Pits Shop Drawings	50d	07/15/14	10/07/14
A146D	Overhead Doors Shop Drawings	70d	07/15/14	10/21/14
A147D	Metal Screening Shop Drawings	70d	07/15/14	10/21/14
A195D	Mechanical & Electrical Equipment	80d	07/15/14	11/04/14
Construction		539d	03/07/14 A	04/22/16
KDAL Building (Center)		78d	03/07/14 A	06/25/14
A201D	Abatement - KDAL Building	36d	03/07/14 A	04/25/14
A199D	Job Mobilization/Site Fencing	5d	04/29/14	05/05/14
A207D	Utility Disconnects	4d	04/29/14	05/02/14
A196D	Demolition - KDAL Building	30d	05/05/14	06/16/14
A206D	Earth Retention	30d	05/14/14	06/25/14
Palladio Building (East)		56d	04/22/14	07/10/14
A359D	Owner Move Out	5d	04/22/14	04/28/14
A202D	Abatement - Palladio	10d	04/28/14	05/09/14
A361D	Utility Disconnects	5d	05/10/14	05/16/14
A197D	Demolition - Palladio	10d	05/17/14	06/30/14
A212D	Earth Retention	10d	06/26/14	07/10/14
Tower Cranes & Material Lift		329d	07/15/14	10/29/15
A355D	Tower Crane	277d	07/15/14	06/17/15
A357D	Material Lift	165d	03/10/15	10/29/15

Activity ID	Activity Name	Original Duration	Start	Finish
A3580	Building Elevator for Construction Use	0d	10/16/15	
Substructure		55d	07/01/14	09/17/14
West		**34d**	**07/01/14**	**08/18/14**
A1580	Excavate	20d	07/01/14	07/29/14
A1520	Drilled Caissons	10d	07/11/14	07/24/14
A2080	Mud Slabs	10d	07/16/14	07/29/14
A1600	Underslab Utilities	20d	07/17/14	08/13/14
A2100	Grade Beams/Pad Footings	10d	07/18/14	07/31/14
A2090	Foundation Walls	10d	07/22/14	08/04/14
A1530	Waterproofing & Insulation	10d	07/29/14	08/11/14
A1570	Concrete Stub Walls & Ramps	5d	08/05/14	08/11/14
A1630	Slab On Grade	5d	08/12/14	08/18/14
Center		**28d**	**07/23/14**	**08/29/14**
A1590	Excavate	15d	07/23/14	08/12/14
A2000	Drilled Caissons	5d	07/30/14	08/06/14
A3700	Mud Slabs	5d	08/04/14	08/13/14
A3710	Grade Beams/Pad Footings	5d	08/06/14	08/15/14
A3480	Underslab Utilities	15d	08/07/14	08/27/14
A3720	Foundation Walls	5d	08/08/14	08/19/14
A3520	Waterproofing & Insulation	5d	08/14/14	08/20/14
A3540	Concrete Stub Walls & Ramps	5d	08/20/14	08/26/14
A3490	Slab On Grade	3d	08/27/14	08/29/14
East		**30d**	**08/06/14**	**09/17/14**
A3280	Excavate & Import Soil	20d	08/06/14	09/03/14
A3290	Drilled Caissons	15d	08/13/14	09/03/14
A3730	Mud Slabs	10d	08/18/14	08/29/14
A3740	Grade Beams	10d	08/20/14	09/03/14
A3500	Underslab Utilities	15d	08/22/14	09/12/14
A3750	Foundation Walls	10d	08/22/14	09/05/14
A3530	Waterproofing & Insulation	10d	08/29/14	09/12/14
A3550	Concrete Stub Walls & Ramps	5d	09/08/14	09/12/14
A3510	Slab On Grade	5d	09/11/14	09/17/14
Parking Structure		1318	07/25/14	02/02/16
A1730	Shear Walls/Core Walls	115d	07/25/14	01/09/15
A1650	Form/Pour 2 - West	12d	05/15/14	05/02/14
A1710	Form/Pour 2 - Center	10d	05/03/14	05/16/14
A1630	Form/Pour 2 - East	10d	05/17/14	05/30/14
A3300	Form/Pour 3 - West	5d	05/30/14	10/09/14
A3310	Form/Pour 3 - Center	5d	10/09/14	10/16/14
A3320	Form/Pour 3 - East	5d	10/16/14	10/23/14
A3330	Form/Pour 4 - West	7d	10/23/14	10/31/14
A3340	Form/Pour 4 - Center	5d	10/31/14	11/07/14
A3350	Form/Pour 4 - East	5d	11/07/14	11/14/14
A3360	Form/Pour 5 - West	7d	11/14/14	11/24/14
A3370	Form/Pour 5 - Center	5d	11/24/14	12/03/14
A3380	Form/Pour 5 - East	5d	12/03/14	12/10/14
A3390	Form/Pour 6 - West	7d	12/10/14	12/18/14

Activity ID	Activity Name	Original Duration	Start	Finish
A340D	Form/Pour 5 - Center	5d	12/18/14	12/29/14
A341D	Form/Pour 6 - East	5d	12/29/14	01/06/15
A342D	Form/Pour 7 - West	5d	01/06/15	01/15/15
A343D	Form/Pour 7 - Center	7d	01/15/15	01/23/15
A344D	Form/Pour 7 - East	7d	01/23/15	02/02/15
DNT		103d	11/13/14	04/13/15
A362D	Owner Move Out	5d	11/13/14	11/19/14
A363D	Abatement	10d	11/20/14	12/05/14
A364D	Material Remova	5d	12/01/14	12/05/14
A365D	Utility Disconnects	5d	12/08/14	12/12/14
A203D	Demolition - DNT	10d	12/15/14	12/30/14
A403D	Excavate	5d	12/31/14	01/07/15
A404D	Drilled Caissons	5d	01/08/15	01/14/15
A405D	Grade Beams	5d	01/15/15	01/21/15
A406D	Foundation Wals	5d	01/19/15	01/23/15
A407D	Waterproofing & Insulation	5d	01/22/15	01/26/15
A408D	3 Hour Rated Separation Wall	15d	01/29/15	02/18/15
A409D	Slab On Grade	3d	01/29/15	02/02/15
A175D	Form/Pour DNT	15d	02/03/15	02/23/15
A184D	Roof Structure	10d	02/24/15	03/09/15
A186D	DNT Facad	20d	03/10/15	04/06/15
A187D	Roofing	5d	04/07/15	04/13/15
Office Structure		190d	02/03/15	10/29/15
A172D	Structural Steel Erected (8th - Roof & Penthouse)	45d	02/03/15	04/06/15
A173D	Structural Steel Detailing & Decking	50d	02/17/15	04/27/15
A174D	Pour Concrete Decks	30d	03/24/15	05/04/15
A211D	Fireproofing	30d	03/31/15	05/11/15
A181D	Elevators	70d	07/23/15	10/29/15
Exterior Skin		190d	02/03/15	09/02/15
A165D	Exterior Wals @ Ramp (Precast)	40d	02/03/15	03/30/15
A176D	Exterior Wals @ Building (Precast)	40d	04/21/15	06/16/15
A177D	Curtain WallWindow Frames /Glass	70d	05/05/15	08/12/15
A182D	Skywalk Connection	60d	05/19/15	08/12/15
A179D	Roofing	30d	06/10/15	07/22/15
A185D	Exterior Wals @ Ramp Remaining (Precast)	30d	06/17/15	07/29/15
A213D	Metal Panels/Louvers	30d	07/23/15	09/02/15
A183D	Building Enclosed	0d		08/12/15
Site		373d	03/31/14 A	09/17/15
A231D	30 Day Notification to MN Power	20d	03/31/14 A	04/25/14
A224D	Delete 4th Street Vault	5d	04/29/14	05/05/14
A226D	Temporary Shore Skyways	10d	04/29/14	05/12/14
A229D	Secure Radisson Tunnel	10d	04/29/14	05/12/14
A232D	MN Power Shutdown (5-6 Hrs)	1d	04/29/14	04/29/14
A225D	Temporary Shoring of Alley	40d	05/05/14	06/30/14
A223D	Superior Street Vault Modifications	10d	07/01/14	07/15/14
A230D	Site Utilities	25d	07/16/14	08/19/14
A227D	Permanently Shore Back Alley	10d	09/04/14	09/17/14

Activity ID	Activity Name	Original Duration	Start	Finish
A228D	Asphalt Paving - Back Alley	3d	05/18/14	05/22/14
A217D	Final Grade	15d	05/19/15	06/09/15
A218D	Class 5	10d	06/10/15	06/23/15
A219D	Curb & Gutter	15d	06/24/15	07/15/15
A220D	Site Concrete/Brick Pavers	40d	07/16/15	09/10/15
A222D	Landscaping/Irrigation	25d	07/23/15	08/26/15
A221D	Asphalt Paving	5d	09/11/15	09/17/15
Interiors - Core & Shell Office/Parking Ramp/Retail Space		220d	02/03/15	12/14/15
Rough In		**125d**	**02/03/15**	**07/29/15**
A272D	Interior Rough In - Public/Retail/Lobby	30d	02/03/15	03/16/15
A264D	Interior Rough In - 7th Floor	15d	04/28/15	05/18/15
A265D	Interior Rough In - 8th Floor	15d	05/12/15	06/02/15
A266D	Interior Rough In - 9th Floor	15d	05/27/15	06/16/15
A267D	Interior Rough In - 10th Floor	15d	06/10/15	06/30/15
A268D	Interior Rough In - 11th Floor	15d	06/24/15	07/15/15
A345D	Interior Rough In - 12th Floor	15d	07/09/15	07/29/15
Finishes		**100d**	**07/23/15**	**12/14/15**
A205D	Parking Ramp Finishes	40d	07/23/15	09/17/15
A274D	Interior Finishes - 7th Floor	25d	07/23/15	08/26/15
A275D	Interior Finishes - 8th Floor	25d	08/13/15	09/17/15
A276D	Interior Finishes - 9th Floor	25d	09/03/15	10/08/15
A277D	Interior Finishes - 10th Floor	25d	09/25/15	10/29/15
A282D	Interior Finishes - Public/Retail/Lobby	40d	09/25/15	11/19/15
A278D	Interior Finishes - 11th Floor	25d	10/16/15	11/19/15
A346D	Interior Finishes - 12th Floor	25d	11/06/15	12/14/15
Interiors - Tenant Improvements (Maurices 7th - 12th Floors)		155d	08/13/15	03/24/16
A283D	Interior Finishes - 7th Floor	60d	08/13/15	11/05/15
A284D	Interior Finishes - 8th Floor	60d	09/10/15	12/04/15
A285D	Interior Finishes - 9th Floor	60d	10/07/15	01/05/16
A286D	Interior Finishes - 10th Floor	60d	11/03/15	02/01/16
A287D	Interior Finishes - 11th Floor	60d	12/02/15	02/26/16
A347D	Interior Finishes - 12th Floor	60d	12/31/15	03/24/16
Completion		60d	01/29/16	04/22/16
A292D	Commissioning	60d	01/29/16	04/21/16
A290D	Punch List	40d	02/12/16	04/07/16
A289D	Substantial Completion	0d		03/24/16
A291D	Owner Move In	20d	03/25/16	04/21/16
A293D	Owner Occupancy	0d	04/22/16	

Attachment V to Grant Agreement
JOBS REPORTING

(a) Pursuant to M.S. Sec. 16A.633, subd. 4, which was added during the 2012 legislative session, [Agency] is required to report the number of jobs created or retained by the Project. To enable [Agency] to comply with M.S. Sec. 16A.633, subd. 4, the Grantee is required to report the number of jobs created or retained by the Project to the Department of Employment and Economic Development as set forth below.

(b) The Grantee shall require all of its contractors to report the information below to the Grantee. The Grantee shall then report to the Department of Employment and Economic Development. Information can be recorded by the Department of Employment and Economic Development in an Excel document that can be downloaded into the report by Minnesota Management and Budget. Each report must contain the following:

(1) The name of the Project.
(2) The Department of Employment and Economic Development's contract number, if applicable.
(3) Reporting period. The appropriate biennium is to be selected.
(4) The Agency Number. This will complete the next column with Agency Name.
(5) Legal Citation for the Authorization.
(6) Department ID responsible for the Project.
(7) The Appropriation for the Project.
(8) The Appropriation Amount.
(9) Project Start Date.
(10) Project Completion Date.
(11) The County where the Project is located or, if it is located in more than one county, where it is primarily located.
(12) Funding Source for Project. The selection will be either Trunk Highway Bonds or General Obligation Bonds.
(13) Job Type. Jobs should be classified as either (i) engineering/professional, (ii) construction, or (iii) other. Manager and supervisor jobs shall be classified as category (i), (ii) or (iii) based on the nature of the work those individuals spent the majority of their time overseeing.
(14) Hourly Wages. Jobs should be classified according to the hourly pay ranges below. Overhead or indirect costs or the value of pensions or other benefits should not be included in wages.

(i) less than $10.00,
(ii) $10.01 to $15.00,
(iii) $15.01 to $20.00,
(iv) $20.01 to $25.00,
(v) $25.01 to $30.00,
(vi) $30.01 to $35.00,
(vii) $35.01 to $40.00, or
(viii) more than $40.00.

(15) Jobs.

a. Jobs should be classified as either (i) jobs created or (ii) jobs retained; they will not be counted as both. A "job created" is a new position created and filled, or an existing unfilled position that is filled, because of the Project. A "job retained" means a job at a specific wage level that existed prior to beginning the Project that would have been lost but for the Project. Only jobs in Minnesota should be counted.

b. Jobs should be expressed in "full-time equivalents" (FTE). In calculating an FTE, the number of hours worked during the Reporting Period should be divided by 1,040 (the number of hours representing a full work schedule in a Reporting Period). Jobs should be reported regardless of when the Project or an individual's employment began or ended. Jobs are to be calculated based on hours worked in the current Reporting Period only, so that reporting is not cumulative.

c. Jobs should not be separated into full-time, part-time, temporary, seasonal, etc. Instead, all hours should be totaled and converted into FTEs as indicated above.

(c) Each contractor will report its workforce and the workforce of its subcontractors active during the Reporting Period. This includes employees actively engaged in the Project who work on the jobsite, in the Project office, in the home office or telecommute from home or other alternative office location. This includes, but is not limited to, any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the Project. This does not include material suppliers such as steel, culverts, guardrail and tool suppliers. Only hours that relate to time spent on the Project should be reported.

(d) The Grantee must incorporate these reporting requirements into its contracts with its contractors (in part so that contractors can add the requirements to their contracts with subcontractors and impose deadlines on reporting by subcontractors.

(c) To distinguish the jobs reported by contractors that were funded by the Grant, the Grantee must multiply the job numbers reported by each contractor in each category above by the percentage of total Project costs funded by the Grant (e.g., if the Grant was 40% of total Project costs, the Grantee should multiply the jobs numbers given in each category by 40% to arrive at the number of jobs funded by the Grant) and it is those numbers that should be reported to the Department of Employment and Economic Development.