

RESOLUTION 15D-15

**RESOLUTION AUTHORIZING A REDEVELOPMENT PROGRAM
GRANT AGREEMENT WITH THE STATE OF MINNESOTA AND
FURTHER AUTHORIZING A SUB-RECIPIENT FUNDING
AGREEMENT WITH HARBOR BAY FLATS**

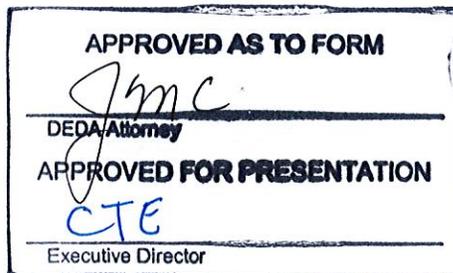
RESOLVED, that the proper DEDA officials are hereby authorized to execute a redevelopment program grant agreement, substantially in the form of that attached hereto (Contract No. _____), with the State of Minnesota acting through the Department of Employment and Economic Development ("DEED") in the amount of \$250,000 payable into Fund 860 related to the Harbor Bay Flats Project, subject to provision of the local matching amount, as required by DEED, by Harbor Bay Flats in an amount of \$295,900.

FURTHER RESOLVED, that the proper DEDA officials are hereby authorized to execute a sub-recipient funding agreement, substantially in the form of that attached hereto (Contract No. _____), with Lift Bridge Partners LLC for the expenditure of the granted funds and the local matching funds in conformance with grant requirements and for an administrative fee in the amount of \$7,500 payable into Fund 860.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2015.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: On January 28, 2015, DEDA adopted a resolution authorizing the February 1, 2015 grant application to DEED's redevelopment grant program for funds on behalf of the Harbor Bay Flats project. Staff was notified in March of DEED's award in the amount of \$250,000.

This resolution authorizes the execution by the DEDA of the grant agreement with DEED on behalf of the Harbor Bay Flats project. It also authorizes a Sub-Recipient Funding Agreement between the DEDA and Lift Bridge Partners LLC ("Developer"). This agreement essentially passes through to Developer DEDA's responsibilities to expend the granted funds and the local matching funds required by the grant on approved redevelopment activities on the project site at 21st Avenue East and London Road. It also includes the payment to the DEDA of an administrative fee in the amount of \$7,500, to be paid by Developer upon execution of the agreement.

STATE OF MINNESOTA
GRANT CONTRACT

SC #: _____

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
BUSINESS AND COMMUNITY DEVELOPMENT DIVISION

Redevelopment Grant Contract

Grant No: RDGP-15-0004-o-FY15
Harbor Bay Flats Project

This grant contract is between the State of Minnesota, acting through the Department of Employment and Economic Development, Business and Community Development Division, (STATE) and the Duluth Economic Development Authority (GRANTEE).

Recitals

1. Under Minn. Stat. § 116J.571 the State is empowered to enter into this grant.
2. The State is in need of programs to do the following: create new jobs, increase the tax base and provide other public benefits by redeveloping underused or unproductive sites.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State.

Grant Contract

1 Term of Grant Contract

1.1 *Effective date:* March 9, 2015.

Pursuant to Minn. Stat. § 16B.98, subs. 5 and 7, no payments will be made to the Grantee until this grant contract is fully executed.

1.2 *Expiration date:* June 30, 2018.

1.3 *Survival of Terms.* The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. Accounting; 10. Government Data Practices; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; 15. Grant Repayment; 16. Data Disclosure; 17. Reporting; 19. Conflict of Interest; and 20. Minnesota Business Subsidy Law.

2 Grantee's Duties

2.1 *Duties, Deliverables, and Completion Dates.* The Grantee, who is not a state employee, will perform the following duties and provide the deliverables as outlined below.

(a) Administer these grant funds in accordance with Minn. Stat. §§ 116J.551 – 559 and the application submitted on February 2, 2015 for funding for the Harbor Bay Flats Project, which is incorporated into this grant agreement and the provisions of this grant agreement. Any modification made to the approved application must be approved by the State.

- (b) Promptly notify the State of any proposed material change in the scope of the project as submitted in the grant application, budget as defined in Section 4.1(a) below, or entire project's completion date, which must be approved by the State, prior to implementation.
- (c) Provide evidence to the State prior to the closeout of the grant that the Redevelopment activities have been completed.
- (d) It is expected that the site will be redeveloped as proposed in the grant application and upon which funding was based. Any material change in the development plans for the site must be presented to the State and approved.
- (e) Adhere to all other requirements of this grant agreement.

2.2 *Provisions for Contracts and Sub-grants.*

- (a) ***Contract Provisions.*** The Grantee must include in any contract and sub-grant, in addition to provisions that define a sound and complete agreement, such provisions that require contractors and sub-grantees to comply with applicable state and federal laws. Along with such provisions, the Grantee must require that contractors performing work covered by this grant be in compliance with all applicable OSHA regulations.
- (b) ***Ineligible Use of Grant Funds.*** The dollars awarded under this grant agreement are grant funds and shall only be used by Grantee or awarded by Grantee to third parties as grant funds and cannot take the form of a loan under any circumstance. Grantee shall not use, treat, or convert the grant funds into an interest bearing loan, a non-interest bearing loan, a deferred loan, a forgivable deferred loan or any other type of loan. Further, Grantee shall include in any contract or sub-grant awarding the grant funds to a third party all the provisions and requirements of this grant agreement, including the requirement that these dollars are grant funds only and cannot be used, treated or converted into any type of loan.
- (c) ***Job Listing Agreements.*** Minn. Stat. § 116L.66, subd. 1, requires a business or private enterprise to list any vacant or new positions with the state workforce center if it receives \$200,000 or more a year in grants from the State. If applicable, the business or private enterprise shall list any job vacancy in its personnel complement with MinnesotaWorks.net at www.minnesotaworks.net as soon as it occurs.
- (d) ***Payment of Contractors and Subcontractors.*** The Grantee must ensure that all contractors and subcontractors performing work covered by this grant are paid for their work that is satisfactorily completed.

3 **Time**

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant, time is of the essence.

4 Consideration and Payment

4.1 **Consideration.** State will pay the Grantee under this grant contract as follows:

(a) **Redevelopment Costs.** The following table represents the total Redevelopment Costs.

Activities	Amount
Site and Building Demolition	\$67,700.00
Reroute Sanitary Sewer Main	\$177,000.00
Repair and Resurface London Road and 22 nd Avenue West	\$136,200.00
Construct Curbs and Sidewalk	\$165,000.00
TOTAL	\$545,900.00

(b) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$250,000.00 (TWO HUNDRED FIFTY THOUSAND DOLLARS).

In accordance with Minn. Stat. § 116J.575, subd. 1, the grant may pay for up to 50 percent of the eligible costs for a qualifying site. This requires a local match of at least 50 percent. For the purpose of this project, based on the budget above, the local match portion is \$295,900.00 which may come from any other money available to the municipality.

4.2. Payment

(a) **Invoices.** The State will disburse funds to the Grantee pursuant to this Contract, based upon payment requests submitted by the Grantee and reviewed and approved by the State. Payment requests must be accompanied by supporting invoices that relate to the activities in the approved budget. The amount of grant funds requested by the Grantee cannot exceed fifty percent (50%) of the total approved Redevelopment costs incurred by the Grantee as supported by invoices. The State will provide payment request forms.

Invoices may be submitted on a monthly basis; however, at a minimum, an invoice for an award shall be submitted by the grantee for expenses incurred 25 days after the end date of the state fiscal year of June 30th. In order to ensure that all funds are drawn prior to the expiration date of the grant, all payment requests must be received at least 30 days prior to the grant-term expiration date.

(b) **Eligible Costs.** “Redevelopment costs” or “costs” means the costs of land acquisition, stabilizing unstable soils when infill is required, infrastructure improvements, and ponding or other environmental infrastructure, demolition costs and costs necessary for adaptive reuse of buildings, including remedial activities.

(c) **Program Income.** Program income generated from grant-funded activities on hand at the end of the grant period must be returned to the State unless the State has approved a re-use of the income.

5 Conditions of Payment

All services provided by the Grantee under this grant contract must be performed to the State’s satisfaction, as determined at the sole discretion of the State’s Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 **Authorized Representative**

The State's Authorized Representative is Erin Welle, Project Manager, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, 651-259-7453, erin.welle@state.mn.us, or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is Jan Saxhaug, Business Developer, 402 City Hall, 411 West First Street, Duluth, MN 55802, 218-730-5331, jsaxhaug@duluthmn.gov. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

7 **Assignment, Amendments, Waiver, and Grant Contract Complete**

7.1 **Assignment.** The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office.

7.2 **Amendments and Adjustments.**

(a) **Amendments.** Any amendments to this grant contract, with the exception of Grant Adjustment Notices (GANs), must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

(b) **Grant Adjustment Notices (GANs).** GANs must be approved by the State in writing, and require a written change request by the Grantee. A GAN may be used for the purposes of transferring budget amounts between line items that do not change the contract value, or other grant status activity. All other changes require a formal amendment as stated in paragraph 7.2(a).

7.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 **Liability**

Subject to the provisions and limitations of Minn. Stat. § 466, the Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

9 **Accounting**

Under Minn. Stat. § 16B.98, subd. 8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

The Grantee shall maintain adequate financial records consistent with generally accepted accounting principles. The Grantee shall submit accounting system records that track the use of grant proceeds and all matching funds by eligible Redevelopment Costs for each year in which grant disbursement and expenditures were made. The records shall reflect both expenditures and revenues and shall be submitted after all grant proceeds and matching funds have been expended or at the State's request.

10 Government Data Practices and Intellectual Property

10.1 *Government Data Practices* The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

10.2 *Intellectual Property Rights*. In the event that Grantee secures a copyright protection on any of the materials, reports, or data created as part of the project, the Grantee agrees to and does hereby grant to the State and its officers, agents, and employees, acting within the scope of their official duties, a royalty-free, non-exclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so for use by the State, its divisions, instrumentalities and local subdivisions, all material now or hereafter covered by any such copyright.

11 Workers' Compensation

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12 Publicity and Endorsement

12.1 *Publicity*. Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract.

12.2 *Endorsement*. The Grantee must not claim that the State endorses its products or services.

13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

14.1 *Termination by the State.* The State may immediately terminate this grant contract with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 *Termination for Cause.* The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. If the project is not started on or before the projected start date of December 31, 2016 or such a later date requested by the Grantee and approved by the State, then the State's obligation to fund the Grant will be terminated. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 *Termination for Insufficient Funding.* The State may immediately terminate this grant contract if:

- (a) It does not obtain funding from the Minnesota Legislature; or,
- (b) If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15 Grant repayment

If a project fails to substantially provide the public benefits listed in the grant application within five years from the date of the grant award, the commissioner may require that 100 percent of the grant amount be repaid by the development authority over a term not to exceed ten years. The commissioner may exercise discretion to require repayment of only a portion of the grant amount taking into account the public benefits generated by the completed development.

16 Data Disclosure

Under Minn. Stat. § 270C.65, subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

Other Provisions

17 Reporting

Grantee must submit to the State annual reports on the use of funds and the progress of the Project covering July 1st through June 30th of each year. The reports must be received by the State no later than July 25th of each year. The reports must identify specific Project goals listed in the application and quantitatively and qualitatively measure the progress of such goals. Grant payments shall not be made on grants, or subsequent grant awards made to the grantee, with past due progress reports. In addition, the Grantee shall submit a final report. The State will provide reporting forms.

18 Debarment and Suspension Certification

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

19 Conflict of Interest

The Grantee must comply with the Conflict of Interest provisions of Minn. Stat. §§ 471.87 – 471.88.

20 Minnesota Business Subsidy Law

The Grantee must comply, if appropriate, with the Minnesota Business Subsidy Law, Minn. Stat. §§ 116J.993 – 116J.995.

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GRANTEE: The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By _____
DEDA President

Date _____

By _____
DEDA Secretary

Date _____

STATE OF MINNESOTA by and through the Department of Employment and Economic Development

By _____

Date _____

ENCUMBERED:
Department of Employment and Economic Development

By _____

Date Encumbered _____

Individual certifies that funds have been encumbered as required by Minn. Stat. 16A.15 and 16C.05.

Grantee: Duluth Economic Development Authority
Grant Name: Harbor Bay Flats
Grant Number: RDGP-15-0004-o-FY15

Distribution:
Agency
Grantee
State's Authorized Representative - Photo Copy

**SUB-RECIPIENT FUNDING AGREEMENT
REDEVELOPMENT GRANT PROGRAM
HARBOR BAY FLATS PROJECT**

THIS AGREEMENT, is entered into by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes (1989) chapter 469 (“DEDA”), and LIFT BRIDGE PARTNERS LLC a Minnesota limited liability corporation (the “Subgrantee”).

WHEREAS, in cooperation with Subgrantee, the DEDA applied to and received approval for funds in the amount of \$250,000 from the State of Minnesota, acting by and through its Department of Employment and Economic Development, Business and Community Development Division (“DEED”) under its Redevelopment Grant Program (the “Redevelopment Grant”); and

WHEREAS, the DEDA desires to award proceeds of the Redevelopment Grant in the amount of \$250,000 (the “Subgrant”) to Subgrantee, to assist Subgrantee with the development of the site on the real property described on attached **Exhibit A** (the “Property”) by funding a portion of the costs of those elements of the development identified in the Redevelopment Grant Agreement identified below (the “Project”).

WHEREAS, the Subgrantee will expend \$295,000 on costs identified in paragraph 4.1(b) in the Redevelopment Grant Agreement as the required local match under the Redevelopment Grant (the “Match Funds”).

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

1. **AWARD.** The DEDA awards the Subgrant to Subgrantee for redevelopment activities as are described in Grant Agreement No. RDGP-15-0004-o-FY15 between the DEDA and DEED attached to this Agreement as **Exhibit B** (the “Redevelopment Grant Agreement”) and the Application to DEED, submitted on February 1, 2015, on file in the DEDA’s Business Development Office, both of which are incorporated into this Agreement and are hereinafter referred to as (the “Documents”). In the event of a conflict between the Redevelopment Grant Agreement, this Agreement and the Grant Application to DEED, the Documents shall be deemed to be controlling in the following order: 1) Grant Agreement No. RDGP-15-0004-o-FY15, 2) this Agreement, and 3) the Grant Application. The Subgrant and Match Funds must be used exclusively to pay or reimburse only expenses authorized under the Redevelopment Grant Agreement. Administrative costs incurred by the Subgrantee are not eligible for reimbursement under this Agreement. Notwithstanding anything to the contrary, the Subgrantee understands and agrees that any reduction or termination of the Redevelopment Grant will result in a like reduction or termination of the Subgrant, and that any material change in the timeline or scope of the Project as set forth in the Documents must be approved in writing by the DEDA and DEED.

2. **ADMINISTRATION FEE.** Upon the execution of this Agreement, Subgrantee shall pay to the DEDA an administrative fee in the amount of \$7,500. Said fee shall be retained by the DEDA in all cases.

3. **PERFORMANCE.** The Subgrantee must comply with all requirements applicable to the DEDA in the Documents. The Subgrant dollars are grant funds only and cannot be used, treated or converted into any type of loan. The Subgrantee shall ensure that its contractors and subcontractors performing work covered by Subgrant dollars are paid for their work that is satisfactorily completed. Subgrantee's default under the Documents will constitute noncompliance with this Agreement. If the DEDA finds that there has been a failure to comply with the provisions of this Agreement or that reasonable progress on the Project has not been or will not be made, the DEDA may take action to protect its interests, including refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed. If a correction to substandard performance is not completed by the Subgrantee within 30 calendar days, or such longer period specified by the DEDA's Business Resources Manager (the "Manager") after written notice by the DEDA, the DEDA may terminate this Agreement.

4. **TIME OF PERFORMANCE.** Subgrantee must complete the Project and the Development on or before June 30, 2018. In order to ensure that all funds are drawn prior to DEDA's Redevelopment Grant Agreement term end date, all payment requests from Subgrantee to DEDA must be received by DEDA at least 45 days prior to said term end date. The DEDA is not obligated to pay for any Project costs incurred thereafter.

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

A. The Subgrantee must have provided evidence satisfactory to the Manager showing that Subgrantee has title in fee simple or site control of the Property as required by the Documents or otherwise meets the requirements of DEED.

B. The Subgrantee must have provided to the Manager such evidence of compliance with all of the provisions of this Agreement and the Documents as the DEDA may reasonably request.

6. **DISBURSEMENT.** It is expressly agreed and understood that the total amount to be paid by DEDA under this Agreement shall not exceed \$250,000 payable from Fund 860. The DEDA will make disbursements only upon receipt of a written payment request in the form provided by DEED (the "Payment Request Form") from Subgrantee acceptable to the DEDA and DEED. Payment requests may be made no more than once per month and must be accompanied by invoices supporting the reimbursement of Subgrantee of Redevelopment Costs and such other documentation related thereto as shall be reasonably requested by the Manager. The Payment Request Form must have attached all invoices from each provider with proof of payment by the Subgrantee. The DEDA will, upon its approval of the Payment Request Form and supporting documentation, forward it to DEED for approval. Upon DEED approval of the Payment Request Form and receipt by the DEDA of the approved amounts of Redevelopment Grant funds, the DEDA will disburse the approved amount of Subgrant funds in accordance with the information provided in the Payment Request Form.

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

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

Subgrantee: Lift Bridge Partners LLC
Attn: Mark Bell
Address: P.O. Box 58
Richmond, IL 60071
Telephone: (608) 209-4492

8. **GENERAL CONDITIONS.**

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

B. **Subcontracts.**

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

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

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

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

E. **Job Listing Agreements.** Subgrantee shall list any vacant or new positions with the state workforce center. Subgrantee shall list any job vacancy in its personnel complement with the Minnesota Works.net at www.minnesotaworks.net as soon as it occurs.

F. **Indemnification and Hold Harmless.** The Subgrantee shall hold harmless, defend and indemnify both DEDA's and DEED's agents and employees from any and all

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

G. Insurance.

1. *Insurance Required.* During the term of this Agreement, Subgrantee and its contractors and subcontractors rendering services being paid with funds from this Agreement shall procure and maintain Public Liability and Automobile Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$1,500,000 per occurrence for personal injury, bodily injury and death, and limits of \$1,500,000 for property damage liability and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. If per person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. Coverages of Subgrantee and its contractors/subcontractors shall include:

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

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

3. *Certificates of Insurance.* Certificates showing that the above-described insurance is carried in the specified amounts shall be furnished to DEDA prior to the disbursement of any of the Subgrant proceeds, and a certificate showing continued maintenance of such insurance shall be on file with DEDA during the term of this Agreement. The form of each certificate of insurance shall contain an unconditional requirement that the insurer notify DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification

of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DEDA will render any such change or changes in said policy or coverages ineffective as against DEDA.

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

9. **ADMINISTRATIVE REQUIREMENTS.**

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

B. **Records.**

1. *Retention.* Audits and records, including but not limited to all financial and environmental documents related to the funds provided under this Agreement, shall be accessible to authorized representatives of the DEED and DEDA for purposes of examination and audit. In addition, the Subgrantee shall give DEED, the Legislative Auditor, and the State Auditor's Office, through any authorized representatives, access to and the right to examine all records, books, papers, and documents related to this Agreement for a minimum of six years from the end of the Redevelopment Grant Agreement term end date, receipt and approval of final reports, or the required period of time for all state and program retention requirements to be satisfied, whichever is later. The Subgrantee shall maintain adequate financial records consistent with generally accepted accounting principles. The Subgrantee shall submit accounting system records that track the use of grant proceeds and all matching funds by eligible Project Costs for each year in which grant disbursement and expenditures were made. The records shall reflect both expenditures and revenues and shall be submitted after all grant proceeds and matching funds have been expended or at the State's request.

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

C. **Reporting.** DEDA must submit to the State annual reports on the use of funds and the progress of the project covering July 1 through June 30 of each year. The reports must identify specific project goals listed in the application and quantitatively and qualitatively measure the progress of such goals. The Subgrantee shall provide the DEDA with all project information and documentation necessary to the completion of such reports.

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

10. **MISCELLANEOUS.**

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

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

C. **Governing Law and Venue.** This Agreement will be governed by, and construed in accordance with, the laws of the State of Minnesota without regard to its choice-of-law provisions. Venue for all legal proceedings arising out of this subgrant or its breach must be in the appropriate state or federal court with competent jurisdiction in St. Louis County, Minnesota; except that if the State of Minnesota is a party to said legal proceedings, venue must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota

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

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

F. **Publicity.** Any publicity regarding the subject matter of this contract must identify the State and DEDA as sponsoring agencies. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Subgrantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this funding agreement.

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

**DULUTH ECONOMIC
DEVELOPMENT AUTHORITY**

LIFT BRIDGE PARTNERS LLC

By: _____
Its President

Date: _____

By: _____
Its Secretary

Date: _____

By: _____
Its:

Date: _____

EXHIBIT A
Legal Description of the Property

The Developer Property is legally described as follows:

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NCS-688255-MPLS

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), and Eight (8), Block Twenty-five (25), ENDION DIVISION OF DULUTH, EXCEPT that part of Lot One (1), Block Twenty-five, ENDION DIVISION OF DULUTH, which lies southwesterly of the line described as: beginning at a point on the northwesterly line of Lot One (1), distant 30 feet northeasterly of the most westerly corner thereof; thence run southeasterly to a point on the southeasterly line of said Lot One (1), distant 30 feet northeasterly of the most southerly corner thereof and there terminating.

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NCS-688695-MPLS

Northerly Forty-five (N'y 45) feet of Lots Nine (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NCS-691825-MPLS

PARCEL 1: The Southerly Thirty-five feet (S'y 35') of Lots (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 2: Southerly Thirty-five feet (S'y 35') of the Northerly Eighty feet (N'y 80') of Lots Nine (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 3: Lot Eleven (11), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 4: Lots Twelve (12) and Thirteen (13), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 5: Lot Fourteen (14), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NVD-688704-MPLS

The Southerly Thirty-five (35) feet of the Northerly One Hundred-fifteen (115) feet of Lots Nine (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

The MnDOT Property is legally described as follows:

That part of Lots 15 and 16, Block 25, Endion Division of Duluth, according to the recorded plat thereof on file and of record in the office of the County Recorder in and for St. Louis County, Minnesota, lying northeasterly of a line run parallel with and distant 30 feet northeasterly of the southwesterly line thereof;

Subject to the following restriction:

No access shall be permitted to Trunk Highway No. 35 from the lands herein conveyed.

A portion of the Turnback Property is legally described as follows:

LEGAL DESCRIPTION FOR PART OF SOUTH ST CONVEYANCE

That part of the Northwesterly 33.00 feet of South Street as dedicated on ENDION DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota, lying Northeasterly of the Southeasterly extension of the Northeasterly line of Lot 15, Block 25, said ENDION DIVISION and lying Southwesterly of the Southeasterly extension of the Northeasterly line of Block 25, said ENDION DIVISION.

Said parcel contains 9920.3 sq. ft. or 0.23 acres more or less.

The remainder of the Turnback Property is legally described as follows:

LEGAL DESCRIPTION FOR PART OF SOUTH ST CONVEYANCE

That part of the Northwesterly 33.00 feet of South Street as dedicated on ENDION DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota, lying Northeasterly of the Southeasterly extension of the Northeasterly line of the Southwesterly 30.00 feet of Lot 16, Block 25, said ENDION DIVISION and lying Southwesterly of the Southeasterly extension of the Northeasterly line of Lot 15, Block 25, said ENDION DIVISION.

Said parcel contains 2320.3 sq. ft. or 0.05 acres more or less.

Exhibit B
Redevelopment Grant Agreement