DULUTH ECONOMIC DEVELOPMENT AUTHORITY

and the

CITY OF DULUTH

BUSINESS SUBSIDY POLICY

1. **PUBLIC PURPOSE.** Whenever the City of Duluth (the "City") or the Duluth Economic Development Authority ("DEDA") invests public funds or agrees to voluntarily forfeit tax or other revenue that benefit private development projects, those projects should create a return on taxpayer investment. The return on investment may come in many forms including increased tax base, creation of high quality jobs, or other benefits.

2. **POLICY DESCRIPTION**

2.01 The purpose of this policy is to establish criteria regarding the use of business subsidies by the City and DEDA under the general Business Subsidy Act pursuant to Minn. Stat. §§ 116J.993 through 116J.995 (the "Business Subsidy Act") and the Job Opportunity Building Zones Act pursuant to Minn. Stat. §§ 469.310 through 469.320 (the "JOBZ Act"). The JOBZ Act and the Business Subsidy Act are hereinafter referred to as the "Acts". This policy and the criteria shall be used as a guide in processing and reviewing applications requesting business subsidy assistance. A copy of this policy shall be submitted to the Minnesota Department of Employment and Economic Development or a successor entity ("DEED").

2.02 The City and DEDA shall have the option of amending or waiving sections of this policy when determined necessary or appropriate. The Business Subsidy Act allows the City and DEDA to deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to DEED. Amendments to this policy and criteria are subject to public hearing requirements pursuant to Minn. Stat. § 116J.994.

2.03 Incentives will be offered based on the nature of the project and the benefits to the City or DEDA. Meeting all or a majority of the criteria does not mean that a business subsidy will be awarded or denied by the City or DEDA. The City and DEDA maintain their ability to approve or reject a business subsidy at their discretion, based on the merits of the project and the overall benefit to the community, using the criteria as a means of measuring overall benefit. Furthermore, the approval or denial of one project is not intended to set precedent for approval or denial of another project.

3. **BUSINESS SUBSIDIES GENERALLY.**

3.01 A business subsidy may include loans, forgivable loans, tax increment financing (TIF), tax abatements or other tax reduction or deferral, guarantees of payment, contributions of property or infrastructure, preferential use of governmental facilities, and/or land contributions valued at $150,000 or more. A business subsidy requires annual reporting by the business subsidy recipient, a public hearing, and a business subsidy agreement between the recipient and the City or DEDA, as applicable.

3.02 There is a level of financial assistance under $150,000 to which reporting by the City or DEDA, as applicable, to DEED applies: 1) financial assistance of $25,000 or more; and 2) business loans or loan guarantees of $75,000 or more.

3.03 Minn. Stat. § 116J.993, subd. 3 exempts certain forms of financial assistance from the requirements of the Business Subsidy Act. These include assistance for job readiness and training, assistance for energy conservation, and federal assistance such as CDBG and HOME Program funding.

3.04 JOBZ business subsidies can only be provided by the City and may include exemption from individual income taxes, exemption from corporate franchise taxes, exemption from state sales and use tax and any local sales and use taxes on qualifying purchases, exemption from state sales tax on motor vehicles and any local sales tax on motor vehicles, exemption from property tax, exemption from wind energy production tax, and/or jobs credit.

4. **DEFINITIONS.** The City and DEDA hereby adopt the definitions in the Acts for application to this policy.

5. **BUSINESS SUBSIDY CRITERIA.**

5.01 In accordance with the Acts, the City and DEDA will assess and measure applicants for business subsidies based on the following business subsidy criteria:

A. Increase the number and diversity of jobs that offer stable employment and high quality wages and benefits;
B. Retain local jobs in Duluth where the loss is imminent and demonstrable;
C. Enhance and diversify the City of Duluth's tax base;
D. Stimulate the redevelopment of underutilized, blighted or obsolete land uses including rehabilitation or demolition of substandard structures and contaminated land;
E. Encourage development of commercial and industrial areas in the city that result in higher quality development or redevelopment and private investment;

F. Achieve development on sites which would not be developed without business subsidies assistance;
G. Offset increased costs of development of specific properties when the unique physical characteristics of the site otherwise preclude private investment;
H. Depending on the nature of the project, such other factors as the City or DEDA may deem relevant in evaluating the project and the business subsidy proposed for it.

5.02 In addition to the business subsidy criteria set forth above, for a JOBZ Business Subsidy, the City must consider the following factors:

A. How wages compare to the regional industry average;
B. The number of jobs that will be provided relative to overall employment in the community;
C. The economic outlook for the industry the business will engage in;
D. Sales that will be generated from outside the state of Minnesota;
E. How the business will build on existing regional strengths or diversify the regional economy;
F. How the business will increase capital investment in the zone; and
G. Any other criteria the commissioner deems necessary.

5.03 All recipients of a business subsidy must pay both current and new employees compensation, including benefits not mandated by law, that on an annualized basis is, at minimum, equal to at least 110 percent of the federal poverty level for a family of four or the living wage as set forth in Section 2-137 of the Duluth City Code, whichever is greater.

Additionally, a recipient of a business subsidy shall be required to cause the laborers, mechanics or apprentice-trainees employed directly upon the work site to be paid the wage rates as set forth in Section 2-25 of the Duluth City Code, commonly known as "Little Davis-Bacon", where such recipient is undertaking a project involving the erection, construction, or repair by recipient of any building or structure or any related infrastructure unless the City or DEDA, as applicable, determines that there is good cause to waive the wage requirement as evidenced by a vote of at least six (6) City Councilors or five (5) DEDA Commissioners, as applicable. For purposes of this paragraph, the definitions set forth in Section 2-25 of the Duluth City Code, with the exception of the definition of the term "Project", shall apply.

5.04 A JOBZ recipient that relocates from outside a JOBZ zone into a zone, as defined in Minn. Stat. § 469.310, subd. 12, must increase full-time employment in the first full year of operation within the JOBZ zone by a minimum of 5 jobs or 20 percent, whichever is greater, and must maintain that level of employment during the JOBZ zone designation.

6. OTHER CONSIDERATIONS.

6.01 The project must be in accordance with the Comprehensive Plan and Zoning Ordinances, or required changes to the plan and ordinances must be under active consideration by the City at the time of approval.

6.02 Prior to approval of a business subsidies financing plan and when deemed appropriate by the City and/or DEDA, the developer or business shall provide any required market and financial feasibility studies, appraisals, environmental data, information provided to private lenders for the project, and other information or data relative to the successful operation of the project that the City or DEDA or its financial consultants may require in order to proceed with an independent underwriting. If requested by the City, the developer shall provide adequate financial guarantees to ensure completion of the project, including, but not limited to: assessment agreements, letters of credit, cash escrows, and personal guaranties.

6.03 A developer requesting business subsidy assistance must demonstrate, to the satisfaction of the City and/or DEDA, sufficient cash equity investment in the project.

7. SUBSIDY AGREEMENT.

7.01 A business subsidy recipient must enter into a subsidy agreement with the City or DEDA, as applicable, which includes, but is not limited to, the following:

A. Description of the subsidy;
B. Statement of the public purpose;
C. Measurable, specific and tangible goals for the subsidy;
D. Description of the financial obligation of the recipient if the goals are not met;
E. Statement of the reason why the subsidy is needed;
F. Commitment to continue operations at the site where the subsidy is used for a minimum of five (5) years after receipt of all financial assistance;
G. Name and address of parent corporation, if any;
H. List of all financial assistance by all grantors for the project;
I. Recipient's obligation if the recipient does not fulfill the agreement; and
J. If the business is qualified to receive JOBZ tax benefits, that business must agree to continue operations in the jurisdiction where the subsidy is used (the "Sub Zone") for the duration of the job zone term.

7.02 If the qualified JOBZ business or JOBZ recipient is a relocating business as defined in Minn. Stat. § 469.310, subd. 12, the business shall be required to enter into a binding written "Relocation Agreement" between the qualified business and the commissioner of DEED that:

A. Increases full-time employment in the first full year of operation within the job opportunity building zone by a minimum of 5 jobs or 20%, whichever is greater, measured relative to the operations that were relocated and maintains the required level of employment for each year the zone designation applies; and

B. Provides for repayment of all tax benefits enumerated under Minn. Stat. § 469.315 to the business under the procedures in Minn. Stat. § 469.319, if the requirements of clause A above are not met for the taxable year or for taxes payable during the year in which the requirements were not met; and

C. Contains any other terms the commissioner determines appropriate.

8. **PUBLIC HEARING.** Before granting a business subsidy of $150,000 or more, the City or DEDA, as applicable, must provide public notice and a public hearing on the subsidy.

9. **REPORTS.**

9.1 Recipients of business subsidies of $150,000 or more must report the information required pursuant to Minn. Stat. § 116J.994, subd. 7.

9.2 Recipients of JOBZ assistance must report the information required pursuant to Minn. Stat. § 116J.994, subd. 7.

9.3 Reporting by the City or DEDA, as applicable, to DEED is required for financial assistance of $25,000 or more and business loan or loan guarantees of $75,000 or more unless specifically excluded in the Business Subsidy Act. Other financial assistance that is excluded from the definition of "business subsidy" may require reporting by recipients pursuant to Minn. Stat. § 116J.994, subd. 7(c).

9.4 The recipient must provide the required reporting data to the City or DEDA, as applicable, by March 1 for the preceding year.

9.5 Reporting is required for two (2) years after the "benefit date" as defined in the Business Subsidy Act or until goals specified in the Business Subsidy Agreement are met, whichever is greater.

10. **REPAYMENT.** Failure to meet business subsidy goals and for JOBZ recipients, failure to be a qualified business, may require repayment of the subsidy pursuant to Minn. Stat. § 116J.994, subd. 6 and Minn. Stat. § 469.319.

11. **JOBZ ACT CONTROLS.** In the event of a conflict between the requirements of the Business Subsidy Act and the JOBZ Act, the JOBZ Act controls.

12. **AMENDMENTS TO THE ACTS.** Any amendments or modifications to the Acts shall amend or modify the terms and definitions of this policy and criteria without any further actions of the City or DEDA.

13. **EFFECTIVE DATE.** This modified business subsidy policy shall be effective January 1, 2012.