

**201X HOME PROGRAM
HOMEOWNER REHAB PROJECT AGREEMENT**

THIS GRANT AGREEMENT, entered into this ____ day of _____, 201x, by and between the City of Duluth, a HOME Program Participating Jurisdiction (PJ), and the Duluth Housing & Redevelopment Authority (Agency) on behalf of the Housing Resource Connection.

WHEREAS, Agency has applied to the City for an allocation of HOME funds for the purpose of the below-described Project; and

WHEREAS, said funding has been approved by the PJ pursuant to Resolution 1x-xxx approved _____, 201x.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, PJ does hereby grant to the Agency the sum of _____ (\$xxx,xxx) under the following terms and conditions:

1. Program Adopted

The HOME Program provisions contained in 24 CFR Part 92 (the Program) are hereby adopted by reference and deemed to be a part of this Agreement. All activities carried on by the Agency pursuant to this Agreement shall be deemed to be governed by the Program.

2. Project Description

It is hereby agreed between the parties that the funds granted to the Agency under this Agreement shall be used exclusively for the purpose of homeowner property rehabilitation (the Project) as stated in the attached Exhibit A and as authorized in the Program. Exhibit A shall include the amount of HOME funds and program(s) to be administered; the tasks to be performed as HOME activities and a schedule for completing these tasks; the number and type of housing units to be rehabbed; environmental review, lead-based paint treatment, Agency roles and responsibilities; maximum HOME subsidy amount; the terms of any homeowner rehab loan; a budget for each program; match requirements; and any additional Project elements specific to the implementation of the Project.

3. Term

The term of this Agreement shall commence on _____, 201x, the date of the signatures to this Agreement notwithstanding, and continue through September 30, 201x, unless terminated earlier as provided for herein. Notwithstanding the above, the time for completing the Project and incurring eligible costs may be extended for a period of time not to exceed twelve (12) months upon the prior written approval of the Community Development Division Manager (the Manager).

4. HOME Budget

The parties agree that the HOME funds granted to the Agency under this Agreement shall be used strictly in compliance with the budget shown in Exhibit A. To be eligible for reimbursement, costs shall conform in character to those shown in Exhibit A and shall not exceed the amounts set forth in said Exhibit A without the prior written approval of the Manager. All costs under this Agreement must be in conformance with the appropriate Federal Office of Management and Budget Circular listed below:

A-87, A-102, A-128 -- Local Public Agencies
A-122, A-133 -- All Other Entities

5. Integrated Disbursement and Information System (IDIS)

Upon commitment of HOME dollars to a housing unit, the Agency shall submit to the PJ a HOME Program Homeowner Set-up Report. Upon completion of each housing unit, the Agency will submit to the PJ a HOME Program Homeowner Completion Report and HOME Program Supplemental Information Report. PJ will promptly enter the data into the Integrated Disbursement and Information System (IDIS).

6. Mortgage Lien

In the event a mortgage lien is executed by a homeowner under the Project, upon execution of such mortgage lien, the Agency agrees to immediately record the mortgage lien with a Notice of Foreclosure in the office of the St. Louis county Recorder and pay all costs associated therewith. The Agency shall keep written reports regarding mortgage liens that have been recorded by the Agency pursuant to this Agreement. Subordination of any mortgage lien taken under the Project to a subsequent lien must be approved in writing by the Manager.

7. HOME Income Limits

Agency will determine that homeowners assisted with HOME funds have an annual income at or below 80% of the Duluth area median income. Annual household income will be determined utilizing the adjusted gross income as defined for purposes of reporting under Internal Revenue Service 1040 series for individual Federal annual income tax purposes.

9. Property Value Limits

The Agency will ensure for single family homes that are rehabilitated, the after rehab value of the home will not exceed 95% of the Duluth area median purchase price. PJ determines the actual 95% of area median value limit in accordance with CFR 24 92.254(a)(2)(iii) for HOME assisted homeownership housing, as indicated in Exhibit A.

10. Religious Activities

The Agency shall not require homeowners to participate in inherently religious activities such as worship, religious instruction, or proselytizing. If Agency is a faith-based organization, Agency may carry out its mission related to religious beliefs, provided that HOME funds do not financially support inherently religious activities. It is acceptable for Agency's Board of Directors to be selected based on religious practice, as well as religious references in mission statements and other governing documents. Agency agrees to serve all eligible households without regard to religion, and shall not restrict HOME units to people of a particular religion or denomination. Eligibility for HOME assisted housing must not rely on the applicant's participation in religious activities or programs.

11. Rehabilitation Standards

The Agency warrants and agrees that upon completion of rehab, the unit will be in compliance with all housing maintenance codes, building and fire codes applicable to structures of its type in the City of Duluth Housing Code, Chapter 29A, as amended by Ordinance 9462, and with the PJ rehabilitation standards that conform with 24 CFR 92.251(b). If the HOME assisted housing unit was built prior to 1978, the Agency warrants and agrees that upon completion of the rehabilitation, the unit will meet the requirements of HUD's Lead Safe Housing Rule (24 CFR Part 35). All rehabilitation work to be funded under this Agreement shall be performed by a contractor or contractors selected pursuant to a competitive bidding process, or by employees of the Agency.

12. Displacement and Relocation Requirements

The Agency shall take all necessary steps possible to minimize displacement. If displacement cannot be avoided, Agency shall be required to demonstrate that it has complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as listed in Exhibit E. At PJ's request, Agency shall submit a written Relocation Plan for approval by the Manager.

13. Conflict of Interest

No person who is an employee, agent, consultant, officer, or elected official or appointed official of the City of Duluth, no member or delegation of the Congress of the United States, the Minnesota Legislature, the Duluth City Council, or any other Federal, State or local official shall benefit from this Agreement. No employee, agent, consultant or officer of the Agency receiving HOME funds or persons who exercise or have exercised any functions or responsibilities with respect to HOME activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an

interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Furthermore, no employee, agent, consultant or officer of the Agency may occupy a HOME assisted housing unit.

14. Affirmative Marketing

If the Project includes five or more HOME assisted units, the Agency shall be required to demonstrate that it, or an agent acting on its behalf, has made good-faith efforts to attract eligible persons from all racial and ethnic groups to the Project during the term of this Agreement. Prior to any funds being reimbursed under this Agreement, the Agency shall submit, and have approved by the Manager, an Affirmative Marketing Plan. The PJ reserves the right to annually review Agency's records documenting affirmative marketing actions, and Agency agrees to take any corrective actions PJ may require when affirmative marketing requirements are not met.

15. Repayment of HOME Funds

Program income as defined in 24 CFR 570.500(a) and any repayment or recapture of HOME funds shall be reported and remitted to PJ upon its receipt in a form and time frame as determined by the PJ. Any program income, repaid or recaptured HOME funds on hand when this Agreement expires, or received after the expiration of this Agreement, shall be remitted to PJ.

16. Fees

Agency is prohibited from charging servicing, origination, or other fees for the costs of administering the HOME funded program(s) except as permitted by CFR 24 92.214(b)(1).

17. Reimbursement of Project Costs

PJ agrees that it will reimburse the Agency for the costs of work conforming to those specified in Exhibit A which are eligible for reimbursement under the Program up to the full amount of the Agreement herein. The Agency shall only request disbursement of HOME funds when the funds are needed to pay eligible costs, and only in the amount needed for such costs. The Agency may apply to the PJ for such reimbursement not more frequently than monthly for expenses incurred in implementing Project, and only for amounts over One Hundred Dollars (\$100.00). The Agency's draw requests shall be accompanied by such documentation as PJ shall deem reasonably necessary to determine that the Project has been completed to that level and that payments for materials and services rendered to the Project and the property are due and payable. Once the PJ determines that the draw request is payable and in conformance with the terms and conditions of this Agreement, PJ shall promptly pay the certified amount. PJ

will not reimburse costs incurred on or prior to December 31 in any year if those expenses have not been included in a request for reimbursement which has been received by PJ prior to January 15 of the following year. In the event that January 15 falls on a holiday or a weekend, the Agency may submit the request the following business day. The above requirements may be waived by the Manager in writing. All sums payable under this Agreement shall be paid as follows: _____ dollars (\$xxx,xxx) from 201x HOME Program Fund 260, Agency 020, Project No. GN14-1738.

Notwithstanding the above, the PJ shall be under no obligation to reimburse the Agency for costs incurred in a property for which the environmental review process has not been satisfactorily completed, as determined in the sole discretion of the PJ.

Agency will retain in their files appropriately executed change orders signed by the Agency and contractor(s). Any change order that requires an increase or decrease in the amount of HOME funding in a housing unit will be subject to PJ review and approval to ensure adequate funds are available to reimburse costs and the costs and construction activities are necessary and reasonable.

The PJ may hold a retainage in an amount determined by the PJ of HOME funds. Retainage will be paid to the Agency when the rehabilitation of the HOME assisted housing is completed; the Agency certifies there are no liens or lienable debts that are outstanding with regard to the improvements to the unit; and the Agency submits a HOME completion report that is accepted by the PJ and entered into the IDIS system.

18. Other Project Requirements

The Agency shall comply with all applicable federal and state laws and regulations as described in 24 CFR Part 92, subpart H inclusive.

19. Reports and Records

The Agency shall be responsible for furnishing to HUD or the PJ such statements, records, data and information as HUD or the PJ may require pertaining to matters covered by this Agreement. In addition to the requirements contained in the Part II, "Supplementary General Conditions for Federally and/or City Assisted Activities," the Agency agrees that it shall prepare and forward to the PJ such information as is required in order for the PJ to meet the requirements of HUD's grantee Consolidated Annual Performance and Evaluation Report. The Agency shall promptly furnish to the PJ any and all financial statements; financial reports; and audits prepared by or on behalf of the Agency in the ordinary course of its business which relate, directly or indirectly, to the provision of services under the Project and this Agreement as soon as the same are developed by or on behalf of the Agency.

The Agency shall submit to the PJ an A-133 audit within nine (9) months of the end of its fiscal year if the Agency expends \$750,000 or more from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year. If the Agency expends less than \$750,000 from all federal funding sources during the Agency's fiscal year, the Agency shall submit to the PJ a financial statement audit conducted in accordance with all effective auditing standards, including management letter, within nine (9) months of the end of its fiscal year.

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD or the PJ with respect to all matters covered by this Agreement. Except as otherwise authorized by HUD, such records shall be maintained by the Agency for a period of six (6) years after the expiration of the term of this Agreement and the affordability period. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

The Agency will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges, and these documents pertaining in whole or in part to the Project shall be treated as records by the Agency.

The Agency shall ensure that at any time during normal business hours and as often as the PJ, HUD, the Comptroller General of the United States, the Legislative Auditor and/or the State Auditor may deem necessary, there shall be made available to the PJ, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor for examination all of its records with respect to all matters covered by this Agreement. The Agency will also permit the PJ, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

20. Enforcement Provisions

In order to ensure compliance with the terms and conditions of this Agreement, the Agency agrees that PJ and its agents and staff shall have the right to have access to the Project units and to inspect them at reasonable times and with reasonable notice to the Agency.

The PJ may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The PJ may terminate this Agreement for cause upon written notice to the Agency specifying the cause for termination, any period for cure by the Agency, and the date of termination. Notwithstanding the above, the PJ may, after giving notice of termination for cause, withhold, without penalty or interest, any payment due under this or any other agreement between the Agency

and the PJ, until there is a cure by the Agency, a waiver by the PJ, or the Agreement is terminated.

Upon termination of this Agreement, all program funds on hand at the time of expiration and any accounts receivable attributable to the use of program funds shall revert to the PJ. In the event that the Agreement is terminated for cause, PJ shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

Further, the Agency shall not be relieved of the liability to the PJ for damages sustained by the PJ by virtue of any breach of this Agreement by the Agency, and the PJ may withhold any reimbursement to the Agency on this and other agreements between the Agency and the City of Duluth for the purpose of set-off until such time as the exact amount of damages due the PJ from the Agency can be determined. For the purposes of this Agreement, cause may include any of the following:

- A. Failure, for any reason, of the Agency to fulfill any of the terms or obligations under this Agreement, or any other agreement between the Agency and the PJ or City of Duluth, in a timely and proper manner.
- B. The making of any arrangement with or for the benefit of Agency's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Agency that it is bankrupt; or filing by the Agency of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Agency unless dismissed within forty-five (45) days.
- C. Submission by the Agency to the PJ of reports, audits or requests for payment that are untimely, incorrect or incomplete in any material respect.
- D. Ineffective or improper use of funds provided under this Agreement.
- E. Suspension, termination, reduction or elimination by HUD or by the Congress of the United States of the grant to the PJ under which this Agreement is funded.
- F. Noncompliance with any laws, ordinances, rules, regulations, Executive Orders, directives or codes of the United States of America, State of Minnesota or the City of Duluth or their respective agencies which are now or later become applicable to its activities under this Agreement, including, but not limited to, any applicable regulations of HUD.
- G. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.
- H. Failure to record a mortgage lien as provided for herein.

- I. Beginning rehab activities prior to the environmental clearance date.
- J. Beginning rehab activities prior to PJ approval to proceed following subsidy layering review (if applicable).
- K. Beginning rehab activities prior to an inspection of the housing structure for compliance with housing codes and lead-based paint hazards (if applicable).

In the event of termination for cause, PJ shall have the right to avail itself of the following remedies; said remedies shall not be deemed to be mutually exclusive:

- L. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.
- M. Seek injunctive relief to enforce the terms and conditions of this Agreement.
- N. Seek such other relief as may be available to PJ at law or in equity.

21. Anti-Lobbying

Agency shall comply with the anti-lobbying legislation, ensuring that no federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Further, if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

22. Subcontractors/Assignability

The Agency shall not make any assignment of this Agreement or subcontract with any other party without the prior written consent of the Manager; provided, however, that claims for money due or to become due to the Agency from the PJ under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the PJ. The Manager hereby consents to the Agency subcontracting with subcontractor(s) selected

pursuant to competitive bidding process who are performing the rehabilitation work. Consent by the Manager to subcontract, assign or otherwise dispose of any portion of this Agreement shall not relieve the Agency of any of the responsibility for fulfillment of this Agreement.

23. HOME Rental Projects On-Site Inspection Services

Agency agrees that it will, at the direction of and in cooperation with PJ's staff, provide on-site housing inspection services necessary to ensure ongoing compliance of HOME Program rental units with City of Duluth Housing code, in accordance with the attached Exhibit B.

24. Homeowner Assistance Agreement

The PJ hereby designates the Agency to enter into the "Homeowner Assistance Agreement between the PJ and the Participant" form of which is attached in Exhibit D.

25. Environmental Review

PJ is the responsible entity regarding environmental review utilizing a tiered evaluation process for environmental assessment of housing activities. Agency will assist the PJ with this responsibility by documenting detailed site and housing structure specific information related to flood plain zone location and historic preservation in accordance with PJ's programmatic agreement, and wetland delineation. If a project is located in a flood plain or wetland, or requires State Historic Preservation Office review under the programmatic agreement, Agency will submit detailed site and housing structure information and proposed rehab activities to PJ. Rehab activities involving physical intervention on a housing structure are prohibited prior to PJ's determination of compliance with environmental review requirements.

26. Amendments

Any amendments to this Agreement shall be in writing and be executed by the same parties who executed the original agreement or their successors in office.

27. Publicity Requirements

In any materials made public with regard to the Project, the Agency agrees to include a reference to the assistance provided pursuant to this Agreement by PJ.

29. Independent Contractor

The Agency's employees and agents will not be considered PJ employees. Agency certifies that it is in compliance with Minnesota Statue 176.181 Subd. 2, pertaining to worker's compensation insurance coverage and benefits. Any claims

that may arise under the Minnesota Worker's Compensation Act on behalf of Agency's employees and any claims made by any third party as a consequence of any act or omission on the part of Agency's employees are in no way the PJ's obligation or responsibility.

30. Liability

Agency agrees to indemnify and save and hold PJ, its agents and employees harmless from any and all claims or causes of action arising from the performance of the Agreement by Agency or Agency's agents or employees.

31. Notices

Notices to PJ provided for herein shall be sufficient if sent by regular mail, postage prepaid, addressed to the Office of Community Development, Room 407 City Hall, Duluth, Minnesota 55802; notices to the Agency if sent by regular mail, postage prepaid, addressed to Director, Duluth Housing & Redevelopment Authority, 222 East 2nd Street, Duluth, Minnesota, 55805, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

32. Documents to be Incorporated

The parties agree that the following documents, as may be amended from time to time, are incorporated by reference and made a part of this Agreement as if fully set forth herein:

- A. Annual Action Plan
- B. City's Monitoring and Financial Policy

33. Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

34. 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.

35. Underwriting

For a housing rehab project in which HOME funds are provided as an amortizing loan, the Agency will submit to PJ prior to the start of rehab activities sufficient information regarding the homeowner, loan terms, and project sources and uses to allow the PJ to determine that the project will result in quality, financially viable

affordable housing for the homeowner, in accordance with PJ's underwriting guidelines. PJ will provide Agency approval to proceed with the rehab project once PJ has completed the underwriting analysis.

36. HUD Funding Contingency

The parties hereto acknowledge that reimbursements to Agency under this Agreement are being provided in full or in part through HOME funding provided through HUD pursuant to an appropriation from the Congress of the United States (Congress). In the event that Congress or HUD reduce or eliminate the funding for the HOME Program in any way whatsoever, or by action or inaction otherwise reduce, impair or eliminate PJ's ability to perform its obligations under this Agreement, PJ shall have the right, in the exercise of its sole and unfettered discretion, to reduce or eliminate the funding available to Agency under this Agreement or to terminate or otherwise modify this Agreement in such a manner as, in the judgment of PJ, best serves its interest with regard to carrying out or not carrying out any of the activities contemplated in the approved Consolidated Plan for the City of Duluth.

37. Entire Agreement

This Agreement, including all exhibits and all documents incorporated by reference, constitutes the entire Agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

38. Authorization to Execute Agreement

The Agency represents to the PJ that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of the Agency who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions thereof.

