

**AMENDMENT NUMBER ONE  
SUB-RECIPIENT FUNDING AGREEMENT BETWEEN  
INDEPENDENT SCHOOL DISTRICT 709 ADULT BASIC EDUCATION  
AND  
CITY OF DULUTH  
FOR THE  
STATE OF MINNESOTA  
DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT  
WORKFORCE DEVELOPMENT DIVISION  
  
PATHWAYS TO PROSPERITY  
CONNECTIONS TO CAREERS IN HEALTHCARE AND CONSTRUCTION**

**THIS AGREEMENT**, effective as of the date of attestation by the City Clerk (“Effective Date”), by and between the **CITY OF DULUTH**, (the "City"), and **INDEPENDENT SCHOOL DISTRICT 709 ADULT BASIC EDUCATION**, (the "Grantee").

**WHEREAS**, the City has entered into a Master Grant Agreement with the State of Minnesota, acting by and through its Department of Employment and Economic Development, Workforce Development Division ("DEED") to apply for and receive funds to provide employment and training services offered through the City’s Workforce Development Department; and

**WHEREAS**, under the Master Grant Agreement, in cooperation with Grantee, the City applied to and received approval for funds in the amount of Three Hundred Twenty-Six Thousand Two Hundred Sixteen Dollars and no/100 (\$326,216.00) from DEED under its Pathways to Prosperity Program (the "Program Grant") to support healthcare and construction industries’ workforce needs and address employment disparities in Duluth and northeast Minnesota. This program will prepare individuals with the skills needed to enter into employment in the healthcare and construction fields and/or access additional education (“the Project”). The Project Specific Plan (“PSP)/Work Plan/Budget – Modifications #1 & #2 is attached as *Exhibit A* and the grant award letter is attached as *Exhibit B*; and

**WHEREAS**, the City desires to award a portion of the Program Grant (the "Subgrant") to Grantee, and Grantee agrees to accept and utilize such proceeds for the Project.

**NOW, THEREFORE**, the parties agree to the following terms:

1. **AWARD**. The City awards a Subgrant to Grantee in the amount of ~~Sixty-Three Thousand Six Hundred Dollars and no/100<sup>th</sup> (\$63,600.00)~~, Seventy One Thousand Nine Hundred Eighteen Dollars and 41/100<sup>th</sup> (\$71,918.41) for Grantee’s performance of its obligations under the Program Grant including:

- A. Perform the duties specified in the PSP/Work Plan/Budget, which is attached as *Exhibit A* and incorporated into this Agreement.
- B. Perform the duties to support the successful enrollment and completion of participants in the training classes as listed in the Calendar of Training, *Exhibit C*.
- C. Achieve the goals as listed in the Budget Narrative, *Exhibit D*.
- D. Follow all DEED policies and procedures including participating in Workforce One training provided by DEED, and entering all program data into Workforce One within the required timeframes.

- E. Provide quarterly reports two weeks prior to the reporting due date and/or any other reporting required by DEED, including Workforce One reporting and the Connections to Careers in Healthcare and Construction Project data.
- F. Submit invoice outlining services provided with supportive documentation to City Director as described in section 5. Examples of documentation for services include detailed receipts and timesheets.
- G. Coordinate with City staff on scheduling for services and/or workshops.
- H. If applicable and as requested, provide evaluations, attendance and completion information for services, trainings or workshops.
- I. Develop and maintain ongoing communication with City staff.

Notwithstanding anything to the contrary, the Grantee understands and agrees that any reduction or termination of the Program Grant may result in a like reduction or termination of the Subgrant, and that any material change in the timeline or scope of the Program must be approved in writing by the City and DEED. The City reserves the right to cancel or postpone training class start dates due to lack of enrolled participants or other circumstances.

**2. PERFORMANCE.** The Grantee must comply with all requirements applicable to the City in the Master Grant Agreement and/or Project Specific Plan. Grantee's default under the Project Specific Plan will constitute noncompliance with this Agreement. If the City finds that there has been a failure to comply with the provisions of this Agreement or that reasonable progress on the Program has not been or will not be made, the City 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 action to correct substandard performance is not taken by the Grantee within 60 calendar days (or such longer period specified by the City) after written notice by the City, the City may terminate this Agreement.

**3. TIME OF PERFORMANCE.** Grantee must start the Program upon execution of this Agreement and complete the Program on or before June 30, 2020. The City is not obligated to pay for any Program costs incurred after that date or any earlier termination, whichever occurs first.

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

- A. The Grantee must have provided the City with evidence of compliance with the insurance requirements of Section 7(G) herein.
- B. The Grantee must have provided to the City such evidence of compliance with all of the provisions of this Agreement as the City may reasonably request.

**5. DISBURSEMENT.** It is expressly agreed and understood that the City will pay Grantee under this Agreement \$31,800 in the SFY 2018 and ~~\$31,800~~ \$41,118.41 in SFY 2019 with the total amount not to exceed ~~\$63,600.00~~ \$71,918.41. City will pay Grantee for all services performed under this Agreement as specified in the Budget Narrative, attached hereto as **Exhibit D**. Grantee's proposed budget is attached as **Exhibit E**. Invoices may be submitted on a monthly basis or other timeframe approved in writing by the Workforce Development Director, but must be submitted at a mid-point, and at the conclusion of the training contract. Payment for services will be sent within 45 days of receipt of invoice.

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

**City:** City of Duluth  
Elena Foshay, Director  
Workforce Development Department  
402 W. 1<sup>st</sup> Street  
Duluth, MN 55802  
218-730-5241

**GRANTEE:** Independent School District 709 Adult Basic Education  
Patricia Fleege, Program Director  
215 N. 1<sup>st</sup> Avenue East  
Duluth, MN 55802  
218-722-8985

**7. GENERAL CONDITIONS.**

**A. General Compliance.** The Grantee agrees to comply with all applicable federal, state and local laws and regulations governing the project and funds provided under this Agreement.

**B. Civil Rights Assurances.** Grantee and City, and their respective officers, agents, servants and employees, as part of the consideration under this Agreement, do hereby covenant and agree that:

1. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the services provided under this Agreement.
2. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

**C. 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 Grantee will at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because the Grantee is an independent contractor.

**D. Liability.** Each party hereto agrees that it will be solely liable for any liability arising out of any acts or omissions of itself or its officers, agents, servants, employees or subcontractors in the performance of its respective obligations under this Agreement.

Nothing herein shall be deemed to create any liability on behalf of either party not otherwise existing as to such party under the provision of the Minnesota Municipality

Limitation of Liability Statute, Minnesota Statute Section 466 *et. seq.*, or to extend the amount of liability of either party to amounts in excess of that specified in said Chapter.

**E. Indemnification.** Grantee will indemnify, defend, and hold harmless the City, its officers, agents, and employees, from any claims or causes of action, including attorney's fees incurred by Grantee arising from the performance of this Agreement by Grantee, or its officers, agents or employees

**F. Workers' Compensation.** The Grantee must provide workers' compensation insurance coverage for all employees involved in the performance of this Agreement.

**G. Insurance.** Grantee shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars for damage liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars per person and be for the same coverages. The City shall be named as an additional insured therein.

Insurance shall cover:

1. Public liability.
2. Independent contractors--protective contingent liability.
3. Personal injury.
4. Contractual liability covering the indemnity obligations set forth herein.

## **8. ADMINISTRATIVE REQUIREMENTS.**

**A. Accounting Standards.** The Grantee 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.* The Grantee must retain all records pertinent to expenditures incurred under this Agreement until conclusion of the latest of (a) six years after the Grantee has completed the Program; (b) six years after the Grantee has expended all proceeds of the Subgrant; or (c) six years after the resolution of all audit findings. Records for nonexpendable property acquired with funds under this Agreement must be retained for six years after final disposition of such property. Records for any displaced person must be kept for six years after he/she has received final payment.

2. *Inspections.* All Grantee records with respect to any matters covered by this Agreement must be made available to the City, DEED or their designees at any time during normal business hours, as often as the City or DEED deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

3. *Audits.* If requested by the City, the Grantee must have an annual financial compliance audit conducted in accordance with the City's requirements. The

Grantee must submit two copies of such audit report to the City. Any deficiencies noted in such an audit report or an audit/monitoring report issued by the City or its designees must be fully resolved by the Grantee within a reasonable time period after a written request from the City. Failure of the Grantee to comply with the provisions of this paragraph will constitute a violation of this Agreement and may result in the withholding of future payments or the requirement for Grantee to return all or part of the funds already disbursed.

4. *Data Practices Act.* The Grantee must comply with the Minnesota Government Data Practices Act, Chapter 13.

5. *Close-Outs.* The Grantee's obligation to the City does not end until all closeout 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 City), determining the custodianship of records and resolving audit findings.

**C. Payments.** The City will pay to the Grantee funds available under this Agreement based upon information submitted by the Grantee and consistent with any approved budget and City policy concerning payments. Payments may be adjusted at the option of the City in accordance with advance funds and program income balances available in Grantee accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Grantee.

**D. Procurement.** The Grantee must maintain an inventory record of all nonexpendable personal property procured with funds provided under this Agreement. All unexpended program income must revert to the City upon termination of this Agreement.

## 9. MISCELLANEOUS.

**A. Assignability.** The Grantee may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of the City; provided, however, that claims for money due or to become due to the Grantee from the City 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 City.

**B. Copyright.** If this Agreement results in any copyrightable material, the author is free to copyright the work, but the City and/or DEED reserves the right to royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

**C. Relationship of the Parties.** It is agreed that nothing herein contained in intended or should be construed in any manner as creating or establishing the relationship of co-partners, joint ventures, or joint enterprise between the parties hereto or constituting either party as an agent, representative or employee of the other for any purpose or in any manner whatsoever.

**D. Governing Law.** This Agreement will be governed by, and construed in accordance with, the laws of the State of Minnesota.

**E. 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.

10. **ENTIRE AGREEMENT.** This Agreement contains all negotiations and agreements between City and Grantee. No other understanding, agreements or understandings regarding the Grant Agreement, or this Agreement, may be used to bind either party

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

**CITY OF DULUTH**

**INDEPENDENT SCHOOL DISTRICT  
709 ADULT BASIC EDUCATION**

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_

Attest:

Its: \_\_\_\_\_

\_\_\_\_\_  
City Clerk  
Date Attested: \_\_\_\_\_

By: \_\_\_\_\_

Countersigned:

Its: \_\_\_\_\_

\_\_\_\_\_  
City Auditor

As to form:

\_\_\_\_\_  
City Attorney

**ATTACHMENTS**

**Exhibit A:** Project Specific Plan/Work Plan/Budget - Modifications #1& #2

**Exhibit B:** Award Letter

**Exhibit C:** Calendar of Training

**Exhibit D:** Budget Narrative - modification 1

**Exhibit E:** Grantee's Budget - modification 1