

**2023 MINNESOTA LOCAL AFFORDABLE AID
WADENA WEST APARTMENTS
CENTER CITY HOUSING CORP.**

THIS GRANT AGREEMENT entered into as of the date of attestation by the City Clerk, by and among the CITY OF DULUTH, a municipal corporation and recipient of Minnesota Local Affordable Aid (the “City”), CENTER CITY HOUSING CORPORATION, a Minnesota non-profit corporation, UEI No. FDU6Y7GFNJZ5 (the “Sponsor”), and WADENA WEST DEVELOPERS, LLC, a Minnesota limited liability company (the “Owner”).

WHEREAS, Sponsor was awarded HUD HOME funds in 2023 to develop a 60-unit permanent supportive housing project on the corner of Wadena Street and 52nd Ave West, (the “Project”). As a result of soil evaluations and the environmental review, it was determined the soil was not sufficient to hold a three-story 48,000-square-foot building. There was significant testing and discussion on the condition of the soil. The experts determined the solution to the problem was to balance the soil and leave that in place for a nine-month settlement period and add aggregate piers to the foundation.

WHEREAS, the additional costs associated with the soil condition resulted in a need of \$341,422.54 in funds for the project to continue.

WHEREAS, the Project meets multiple Minnesota Local Affordable Aid Qualifying Project requirements, specifically:

- Financial support to nonprofit affordable housing providers in their mission to provide safe, dignified, affordable and supportive housing;
- Projects designed for the purpose of construction, acquisition, rehabilitation, demolition or removal of structures, construction financing, permanent financing, interest rate reduction, refinancing, and gap financing of housing to provide affordable housing to households that have incomes which do not exceed, for rental housing projects, 80% of the greater of state or area median income as determined by the United States Department of Housing and Urban Development; and
- Projects are prioritized that provide affordable housing to households that have incomes that, for rental housing projects, do not exceed 50 percent of the greater of state or area median income as determined by the United States Department of Housing and Urban Development.

WHEREAS, the City received the Local Affordable Housing Aid in late December of 2023; and

WHEREAS, the Sponsor is the sole member of the Owner; and the Owner will operate the affordable rental housing project.

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

1. Grant

The City hereby agrees to provide funding to Sponsor in the amount of up to Three Hundred Forty-One Thousand, Four Hundred Twenty-Two and 54/100 Dollars (\$341,422.54) payable from Fund 210-030-3213-5458.

2. Use of Funds

The parties agree that funds granted to Sponsor shall be used exclusively for the purpose of development and construction of the Project by Owner.

3. Construction

The Project shall be completed and all eligible costs incurred not later than December 31, 2024. 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 Manager of Planning and Development

4. Affordability Period

The term of this Agreement shall commence on the date first written above and shall continue for twenty (20) years from the date of completion of the Project, unless terminated soon as provided for herein. The Sponsor agrees to develop a 60-unit permanent supportive housing project subject to rent limits for twenty (20) years following completion of the Project. The rent limits applicable to the Project will be for people who do not exceed 50 percent of the greater of state or area median income as determined by the United States Department of Housing and Urban Development. The City of Duluth will annually monitor these rent limits for 20 years after construction of the Project has been completed.

5. Property Standards

Upon completion of construction of the Project and throughout the duration of this Agreement the Owner warrants and agrees that it will be in compliance with all housing, building and fire codes applicable to structures of its type in the City of Duluth. The Owner also agrees to obtain and maintain any required City of Duluth Rental Property License for the Project.

6. Labor Standards

The Sponsor agrees that, as a condition of receiving the grant of funds herein provided for, Sponsor shall cause its prime contractor or contractors performing

construction work on the Project to execute a Project Labor Agreement with the City and the Duluth Building and Construction Trades Council in the form approved by the Duluth City Council pursuant to Section 2-29(b) of the Duluth City Code, 1959, as amended, applicable to all construction work on the Project. Sponsor further agrees that it will enter into, and will require said contractors to enter into, the Memorandum of Understanding with the City to ensure that the City Community Benefits Program is implemented as part of the Project.

7. 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 Owner or Sponsor receiving funds or persons who exercise or have exercised any functions or responsibilities with respect to 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 Sponsor or Owner may occupy an assisted-housing unit in the Project, except for an employee or agent of the Owner who occupies a housing unit as a project manager or maintenance worker.

8. Reimbursement of Project Costs

The City agrees that it will reimburse the Sponsor for the costs of work conforming to those specified in this document, which are eligible for reimbursement under the Minnesota Local Affordable Aid Qualifying Program requirements up to the full amount of the grant provided herein. The Sponsor shall only request disbursement of funds when the funds are needed to pay eligible project costs, and only in the amount needed for such costs. The Sponsor may apply to the City for such reimbursement not more frequently than monthly for expenses incurred in implementing the Project, and only for amounts over One Hundred Dollars (\$100.00). The Sponsor's draw requests shall be accompanied by such documentation as City 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 are due and payable. Upon determination that the draw request is payable and in conformance with the terms and conditions of this Agreement, City shall promptly pay the certified amount.

Notwithstanding the above, the City shall be under no obligation to reimburse the Sponsor, and this contract shall be deemed null and void, in the event that an

environmental review process has not been satisfactorily completed as determined in the sole discretion of the City.

9. Enforcement Provisions

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

The City may terminate this Agreement for cause upon at least 30 days' prior written notice to the Owner and Sponsor specifying the cause for termination, any period for cure by the Owner and Sponsor, and the date of termination. Notwithstanding the above, the City may, after giving notice of termination for cause, withhold, without penalty or interest, any payment due under this or any other agreement between the Owner or Sponsor and the City, until there is a cure by the Owner or Sponsor, a waiver by the City, 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 City. In the event that the Agreement is terminated for cause, the City shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

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

- A. Failure, for any reason, of the Owner or Sponsor to fulfill any of the terms or obligations under this Agreement, or any other agreement between the Owner or Sponsor and the City, in a timely and proper manner.
- B. The making of any arrangement with or for the benefit of Owner's or Sponsor's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Owner or Sponsor that it is bankrupt; or filing by the Owner or Sponsor of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Owner or Sponsor unless dismissed within forty-five (45) days.

- C. Submission by the Sponsor or Owner to the City of reports, audits or requests for payment that are untimely, incorrect or incomplete in any material respect.
- D. 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 the Minnesota Housing Finance Agency.
- E. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.
- F. Failure to complete all work on the Project as provided for herein.
- G. The abandonment of the Project by the Owner or Sponsor or the conversion of the Project to any use other than that of housing for low- and moderate-income families as provided for herein.
- H. Failure by the Owner or Sponsor to operate the Project in compliance with the affordability requirements for the period of affordability.
- I. Failure of the parties to agree to a Construction Plan.
- J. Ineffective or improper use of funds provided under this Agreement.

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

- A. Demand immediate and full repayment of the amount granted to Owner or Sponsor pursuant to this Agreement.
- B. Seek injunctive relief to enforce the terms and conditions of this Agreement.
- C. Seek such other relief as may be available to the City at law or in equity.

10. Amendments

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

11. Insurance

Sponsor and Owner agree that all construction work to be funded under this Agreement shall be performed by a contractor or contractors selected pursuant to a competitive bidding process. All contractors shall be required to provide public liability insurance, automobile liability insurance, builder's risk insurance, and workers' compensation insurance in forms and amounts acceptable to the City.

Owner shall further carry fire and extended coverage insurance on the Project in an amount equal to the full value of the Project and contents, as constructed, and public liability insurance in amounts reasonably determined adequate by the City. Proof of said insurance shall be provided to the City annually. Such policy of insurance shall contain a provision that thirty (30) days' advance notice in writing shall be given to the City prior to termination, cancellation or modification of such insurance.

12. Maintenance

At all times, Owner agrees to keep all dwelling units in the Project in good condition and repair, fully tenantable, in compliance with all applicable codes and requirements and not to remove or demolish any dwelling units thereon; to complete or restore promptly and in good and workmanlike manner any part of any dwelling unit which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished to the Project; to pay all lawful taxes when due; to comply with all laws affecting Project or requiring any alterations or improvements to be made thereon; not to commit or permit any waste thereof; not to commit, suffer or permit any action thereon in violation of law.

13. Publicity Requirements

In any materials made public regarding the Project, the Sponsor and Owner agree to reference the assistance provided by the City pursuant to this Agreement.

14. Independent Contractor

Owner's and Sponsor's employees and agents shall not be considered the City employees. Owner and Sponsor certify that they are in compliance with MN 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 Owner's or Sponsor's employees and any claims made by a third party as a consequence of any act or omission on the part of Owner's or Sponsor's employees are in no way the City's obligation or responsibility.

15. Indemnification

The Owner and Sponsor agree, jointly and severally, to defend, indemnify and save harmless the City and hold the City, its officers, agents, servants and employees harmless from any and all claims, actions demands, suits, losses, judgments, costs, expenses and damages, direct and indirect, incident, incidental and consequential, including but not limited to attorney's fees, asserted by any person(s) including agents or employees of the City, the Owner or Sponsor, arising out of or resulting from any actual or alleged act or omission of the Owner or Sponsor, their officers, agents, servants or employees in connection with or relating to the performance of this Agreement. On ten (10) days' written notice from the City, the Owner and Sponsor shall appear and defend all lawsuits against the City growing out of such injuries or damages.

16. Notices

Notices to the City provided for herein shall be sufficient if sent by regular mail, postage prepaid, addressed to the Planning and Development Division, Room 160 City Hall, Duluth, Minnesota 55802; notices to the Owner or Sponsor if sent by regular mail, postage prepaid, addressed to Center City Housing Corp. and Wadena West Developers, LLC, 105 ½ W First Street, Duluth, MN 55802; or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

17. Compliance with All Laws

The Owner and Sponsor agree to observe and comply with all laws, ordinances, rules and regulations of the United States of America, State of Minnesota and the City of Duluth and their respective agencies which are applicable to its activities under this Agreement, including but not limited to all laws relating to unlawful discrimination.

18. Waiver

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

19. 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.

20. Entire Agreement

This Agreement 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.

21. Authorization to Execute Agreement

The Owner and Sponsor represent to City that the execution of this Agreement has been duly and fully authorized by their governing body or board, that the officers of the Owner and Sponsor 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 Owner and Sponsor in accordance with the terms and conditions thereof.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

By _____
Mayor Date

CENTER CITY HOUSING CORPORATION

By _____ Date _____

Its _____

IRS Tax ID No. 36-3485584

Attest::

City Clerk Date

Countersigned:

City Auditor Date

WADENA WEST DEVELOPERS, LLC

By _____ Date _____

Its _____

IRS Tax ID No. 88-1744647

Approved as to form:

City Attorney Date