

SUBGRANT AGREEMENT
WORKFORCE HOUSING DEVELOPMENT PROGRAM
CITYVIEW FLATS, LLC

THIS SUBGRANT AGREEMENT, is entered into by and between the CITY OF DULUTH, a municipal corporation (the “City”), and CityView Flats, LLC, a Minnesota limited liability company (the “Subgrantee”).

WHEREAS, the City applied for and received approval of a grant in the amount of \$180,000 (the “Grant”) from the State of Minnesota, acting through its Commissioner of the Minnesota Housing Finance Agency (“MHFA”) under its Workforce Housing Development Program (the “Program”); and

WHEREAS, the City desires to award the proceeds of the grant (the “Subgrant”) to Subgrantee, to assist Subgrantee with the development of rental housing to serve employees of local businesses (“Workforce Housing”) on property located at 333 North First Avenue West in Duluth, MN and legally described on attached Exhibit A (the “Property”); and

WHEREAS, the City and St. Louis County will each provide a match in the form of tax abatement in the amount of \$400,000 for a total match of \$800,000; and

WHEREAS, the Subgrantee will expend \$180,000 on project-specific costs resulting in direct development of the Workforce Housing project more fully described below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **RECITALS.** The recitals set forth above are hereby incorporated in and made a part of this Agreement by reference.
2. **AWARD.** The City awards the Subgrant to Subgrantee to assist with the development of Workforce Housing as described in the Grant Agreement between the City and MHFA attached to this Agreement as Exhibit B (the “Grant Agreement”) and the Application to MHFA submitted on January 25, 2018, on file in the City’s Community Planning 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 Grant Agreement, this Agreement and the Grant Application to

MHFA, the Documents shall be deemed to be controlling in the following order: 1) the Grant Agreement 2) this Agreement, and 3) the Grant Application.

3. **THE PROJECT.** The Workforce Housing project (the “Project”) shall include 105 rental units, up to 96 units of which will be market rate units and no less than 9 of which will be rent restricted units at 80% area median income. The Project will include a tuck under parking garage, a fitness center, community rooms, management offices and other amenities at a total Project cost of not less than \$20,000,000.

4. **QUALIFIED EXPENDITURES.** The Subgrant must be used exclusively to reimburse only those qualified expenditures of project-specific costs resulting in the direct development of market rate residential rental properties to serve employees of a business or businesses located in Lincoln Park, Downtown, Central Hillside and East Hillside neighborhoods of Duluth or surrounding area. Qualified expenditures consist of those expenses authorized under Minnesota Statute 462A.39 subd. 2(e).

5. **PERFORMANCE.** The Subgrantee must comply with all requirements applicable to the City in the Documents. Subgrantee’s default under the Documents 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 Project 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 a correction to substandard performance is not completed by the Subgrantee within 30 calendar days, or such longer period specified by the City’s Director of Planning and Construction Services (the “Director”) after written notice by the City, the City may terminate this Agreement.

6. **TIME OF PERFORMANCE.** Subgrantee agrees to commence construction of the Project on or before August 1, 2018 and to complete Project construction on or before July 31, 2020. All payment requests from Subgrantee to the City must be received by the City within forty-five (45) days of completion of Project construction. The City is not obligated to reimburse for any Project costs incurred thereafter.

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

A. The Subgrantee must have provided evidence satisfactory to the Director showing that Subgrantee has title in fee simple of the Property.

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

8. **DISBURSEMENT.** It is expressly agreed and understood that the total amount to be reimbursed by the City under this Agreement shall not exceed \$180,000 payable from Fund 5434. The City will make disbursements only upon receipt of a written payment request in a form acceptable to the City from Subgrantee. Payment requests may be made no more than once per month and must be accompanied by paid invoices, receipts, canceled checks, mechanics' lien waivers or comparable evidence and documentation as may be requested by the Director showing payment of Qualified Expenditures supporting the reimbursement of Subgrantee. Additionally, supporting documentation of the bidding processes used to contract services, payroll for the construction trades and the Project Labor Agreement must be submitted with payment requests as required pursuant to sections 10 B. and 10 C.2. of this Agreement. The City will, upon its approval of Subgrantee's payment request and supporting documentation, forward it to MHFA for approval. Subgrantee understands that up to one-third of the Grant funds will be disbursed to the City upon the execution of the Grant Agreement, an additional amount up to one-third of the Grant funds will be disbursed to the City during Project construction, and the remaining balance of the Grant funds will be disbursed to the City at Project completion. Subject to receipt by the City of sufficient Grant fund amount to cover the approved reimbursement amounts and upon MHFA approval of the payment request, the City will disburse the approved amount of Subgrant funds in accordance with the information provided in the payment request.

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

City: City of Duluth
Attn: Keith Hamre
322 City Hall
411 W. 1st Street
Duluth, MN 55802
Telephone: (218) 730-5302

Subgrantee: CityView Flats, LLC
Attn: Marshall Jackson
Address: 1905 Stevens Ave. S. Suite B

Minneapolis, MN 55403
Telephone: (612) 801-5729

or at such other address with respect to either such party as that party may, from time to time designate in writing and forward to the other as provided in this section.

10. **GENERAL CONDITIONS.**

A. **General Compliance.** The Subgrantee agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations governing the Project and the Subgrant including the Visitability requirements of Minnesota Statutes §462A.34. The Subgrant funds may only be used by Subgrantee in accordance with the terms of the Program.

B. **Bidding.** Subcontractor must conduct a bidding process in compliance with Minnesota Statute §16C.28. The bid request must state that the Project is subject to prevailing wages. Supporting documentation of the bidding processes used to contract services must be submitted to the City with the payment requests.

C. **Subcontracts.**

1. *Compliance with Laws.* The Subgrantee must require that contractors performing work on the Project comply with all applicable federal, state and local laws, ordinances, rules and regulations governing the Project including the Visitability requirements of Minnesota Statutes §462A.34 and all applicable OSHA regulations.

2. *Prevailing Wage.* The Project is subject to prevailing wage. The Subgrantee and its contractors must pay laborers and mechanics working on the Project the prevailing wage rate as defined in Minnesota Statutes §177.42. subd. 6. Payroll for the construction trades must be submitted to the Director with the payment requests. Additionally, the Subgrantee shall enter into a Project Labor Agreement in conformance with the requirements of Section 2-29 of the Duluth City Code, 1959, as amended.

D. **Reporting.** The Grantee is required to complete an annual report which will include such information and will be in the format provided by MHFA. When Project construction is completed and rental units are suitable for occupancy and prior to final disbursement of Grant funds, the Grantee is required to complete a final report which will include such information and will be in the format provided by MHFA. The Subgrant agrees to provide to the Grantee in a timely manner any information needed to enable the City to complete

the annual report and the final report. The City and/or MHFA may monitor the Project which may include a phone call and/or site visit by the City and/or MHFA staff.

E. **Grant Reduction or Termination.** Notwithstanding anything to the contrary, the Subgrantee understands and agrees that any reduction or termination of the Grant will result in a like reduction or termination of the Subgrant.

F. **Government Data Practices.** Subgrantee shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as may be amended from time to time (the "Act"), as it applies to all data provided by the City under this Agreement and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Subgrantee under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by Subgrantee. If Subgrantee receives a request to release the data referred to in this clause, Subgrantee must immediately notify the City and consult with the City as to how Subgrantee should respond to the request. Consultant's response to the request must comply with applicable law.

G. **Publicity.** Any publicity regarding the subject matter of this Agreement must identify the State of Minnesota as the sponsoring agency and must not be released without prior written approval from the Director. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs and similar 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 Agreement.

H. **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 City 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.

I. **Indemnification and Hold Harmless.** The Subgrantee shall hold harmless, defend and indemnify the City and MFHA from any and all liability, claims, actions, suits, charges, damages, losses, costs, expenses, and judgments whatsoever, including reasonable

attorneys' fees, that arise directly or indirectly out of the Subgrantee's, its contractor's or subcontractor's performance or nonperformance under this Agreement.

J. 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. The City shall be named as an additional insured under the Public Liability and Automobile Liability Insurance. The City 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 the City prior to the

disbursement of any of the Subgrant proceeds, and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement. The form of each certificate of insurance shall contain an unconditional requirement that the insurer notify the City 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 the City will render any such change or changes in said policy or coverages ineffective as against the City.

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 the City, the City may withhold payments and/or pursue any other rights or remedy allowed under this Agreement, law, equity, and/or statute.

11. **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.** Audits and records, including but not limited to all financial documents related to the Subgrant funds provided under this Agreement, shall be accessible to authorized representatives of the City for purposes of examination and audit. In addition, the Subgrantee shall give the City, 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 Grant Agreement term end date.

12. **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 Director; provided, however, that claims for money due or to become due to the Subgrantee 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. **Default on Tax Abatement Development Agreement.** A default by Subgrantee under the Tax Abatement Development Agreement between Subgrantee and City shall be deemed to be a default under this Agreement.

C. **Amendments.** Any amendment to this Agreement 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 Agreement, or their successors in office.

D. **Waiver.** If the City fails to enforce any provision of this Agreement, that failure does not waive the provision or the City's right to enforce it.

E. **No Third Party Rights.** This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

F. **Limits of Liability.** Nothing in this Agreement shall be construed as a waiver by the City of any immunities, defenses, or other limitations on liability to which the City is entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.

G. **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. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

H. **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.

I. **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.

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

CITY OF DULUTH

CITYVIEW FLATS, LLC

Mayor

By: _____
Its: _____

Attest:

City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

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EXHIBIT A

Legal Description of the Property

PID 010-1000-00400: DULUTH PROPER 1ST DIVISION WEST 4TH STREET - LOTS 18 AND 20

PID 010-1000-00420: DULUTH PROPER 1ST DIVISION WEST 4TH STREET – LOT 22 E ½

PID 010-1000-00430: DULUTH PROPER 1ST DIVISION WEST 4TH STREET – LOT 22 W ½

PID 010-1000-00440: DULUTH PROPER 1ST DIVISION WEST 4TH STREET – LOT 24 ELY 46 FT

**STATE OF MINNESOTA
GRANT CONTRACT**

This Grant Contract is between the State of Minnesota, acting through its Commissioner of the Minnesota Housing Finance Agency (the "State") and **The City of Duluth, 411 West First Street, Duluth, MN 55802** (the "Grantee").

Recitals

1. Under Minn. Stat. §462A.39, the State is empowered to enter into this Grant Contract.
2. The State is in need of the development of rental housing to serve the employees of local businesses ("Workforce Housing") in **St. Louis County, City of Duluth** pursuant to the State's Workforce Housing Development Program (the "Program").
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. Pursuant to Minn.Stat. §16B.98, Subd.1, the Grantee agrees to minimize administrative costs as a condition of this Grant Contract.

Grant Contract

1 Term of Grant Contract

1.1 *Effective date:*

The date the State obtains all required signatures under Minn. Stat. §16B.98, Subd. 5. Per, Minn.Stat. §16B.98 Subd. 7, no payments will be made to the Grantee until this Grant Contract is fully executed. **The Grantee must not begin work under this Grant Contract until this Grant Contract is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.**

1.2 *Expiration date:*

After three years from execution, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3 *Survival of Terms.*

The following clauses survive the expiration or cancellation of this Grant Contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15 Data Disclosure.

2 Duties and Contracts

2.1 *Grantee's Duties*

The Grantee, who is not a state employee, will:

Comply with required grants management policies and procedures set forth through Minn.Stat. §16B.97, Subd. 4 (a) (1).

The Grantee has made application to the State for the purpose of administering a Workforce Housing Development Program Project in the manner described in Grantee's Application (the "Project") which is incorporated into this Grant Contract by reference.

The Grantee, who is not a state employee, is awarded funds to provide financial assistance to address the need for Workforce Housing. The Project includes: **New construction of a six-story apartment building with a minimum of 96 units.**

The Grantee will comply with all requirements as further described in **Exhibit A** attached to this Grant Contract and incorporated by reference.

The Grantee will be in compliance with the Workforce Housing Development Program Guide, as amended (the "Program Guide"), which is incorporated into this Grant Contract by reference.

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 local, state and federal laws, rules, regulations and ordinances, as well as any applicable State policies.

(b) Use of Grant Funds. The Grant Funds (as defined below) awarded under this Grant Contract may only be used by Grantee or awarded by Grantee to third parties as grant funds or loans in accordance with the terms of the Program Guide. All Grant Funds must be used by an Eligible Project Area for the Qualified Expenditures of a Market Rate Residential Rental Property (as such terms are defined in the Program Guide). If awarded as a loan, any fees or interest charged cannot unduly enrich any parties involved beyond the approximate cost of the administrative costs associated with the Project.

3 Time

The Grantee must comply with all the time requirements described in this Grant Contract and the Program Guide. In the performance of this Grant Contract, time is of the essence. Project construction must begin within 12 months upon signing this Grant Contract. Construction completion must occur within 2 years of construction start.

4 Consideration and Payment

4.1 Consideration.

The State will pay for all services performed by the Grantee under this Grant Contract as follows:

(a) Compensation

The Grantee will be paid in accordance to section 4.2 of this Grant Contract.

(b) Total Obligation.

The total obligation of the State for all compensation and reimbursements to the Grantee under this Grant Contract will not exceed **\$180,000.00** (the "Grant Funds").

4.2 Payment

For all disbursements of Grant Funds, the Grantee be in compliance with the Program Guide and must complete and submit a Workforce Housing Development Program Disbursement Request Form, attached to this Grant Contract as **Exhibit B**, to the State for review and approval.

The State will promptly pay the Grantee up to one third of the Grant Funds on or after closing. The Grantee may request an additional one third of the Grant Funds as needed upon providing evidence of a grant or loan agreement relating to the Project with a subgrantee. The remaining one third of the Grant Funds will be withheld for final disbursement, and will not be released until construction completion of the Project and upon completion of all reporting and monitoring requirements pursuant to this Grant Contract.

4.3 Unexpended Funds

The Grantee must promptly return to the State any unexpended Grant Funds that: (i) have not been accounted for annually in a financial report to the State due at Grant Contract closeout; or (ii) have not been used in compliance with the Program Guide.

4.4 Contracting and Bidding Requirements

Per Minn. Stat. §471.345, grantees that are municipalities as defined in Subd. 1 must do the following if contracting funds from this Grant Contract for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property

- (a) If the amount of the contract is estimated to exceed \$100,000, a formal notice and bidding process must be conducted in which sealed bids shall be solicited by public notice. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).
- (b) If the amount of the contract is estimated to exceed \$25,000 but not \$100,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2) and paragraph (c).
- (c) If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).
- (d) Support documentation of the bidding process utilized to contract services must be included in the grantee's financial records, including support documentation justifying a single/sole source bid, if applicable.
- (e) Loans and grants under this Program are subject to the prevailing wage requirements of Minn. Stat. §116J.871. If the Project meets the requirements of that statutory provision the bid request must state the Project is subject to prevailing wages. A person receiving financial assistance under this Grant Contract must certify to the commissioner of labor and industry that laborers and mechanics at the Project site will be paid the prevailing wage rate as defined in Minn. Stat §177.42, subd. 6. It is a misdemeanor for a person who has certified that prevailing wages will be paid to laborers and mechanics to subsequently fail to pay the prevailing wages. Each day a violation of that requirement continues is a separate offense.

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 **Katie Moore, Program Manager, 651.296.6354, katie.moore@state.mn.us, 400 Wabasha St N, Suite 400, St. Paul, MN 55102** 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 **Suzanne Kelley, Planner, 218.730.5302, skelley@duluth.mn.gov, 411 West First Street, Duluth, MN 55802**. 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

Any amendments to this Grant Contract 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.

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

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 State Audits

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 Contract 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 Contract, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

10 Government Data Practices and Intellectual Property Rights

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 the Grantee secures a copyright protection on any of the work product 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 the use by the State, its divisions, instrumentalities, and local subdivisions, all materials, reports, writings, sound recordings, pictorial reproductions, drawings, or other graphical representations, and works developed and/or used in connection with the Project now or hereafter covered by 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 and must not be released without prior written approval from the State's Authorized Representative. 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. All projects primarily funded by state grant appropriation must publicly credit the State of Minnesota, including on the Grantee's website when practicable.

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 or the Program Guide, 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. 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 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.

16 Fraud Disclosure

The Grantee must report all known or suspected instances of fraud in connection with the making or receipt of the Program funds to the State's Chief Risk Officer as soon as evidence of fraud is discovered by the Grantee. "Fraud" means an intentional deception made for personal gain or to damage another.

17 Suspension

By entering into any agreement with the State, accepting any award of funds from the State, or otherwise conducting any business with the State, the Grantee represents that the Grantee, or any principal of the Grantee, has not been suspended from doing business with the State pursuant to the Minnesota Housing Finance Agency Board of Directors Participant Suspension Policy. A principal is defined as: (a) an officer, director, owner, partner, principal investigator, or other person within an organization or entity doing business with the State with management or supervisory responsibilities; or (b) a consultant or other person, who: (1) is in a position to handle state funds; (2) is in a position to influence or control the use of those funds; or (3) occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to be performed under contract with the State. Please refer to the State's website or contact the State's Authorized Representative for a list of all suspended individuals and organizations.

1. STATE ENCUMBRANCE VERIFICATION

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

Signed: _____

Date: _____

SWIFT Contract/PO No(s): _____

2. 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: _____

Title: Mayor

Date: 5/8/18

By: Pranita A. Mishra

Title: City Clerk

Date: 3-8-10

By: John A. [Signature]

Title: City Auditor

Date: 5/16/18

3. STATE AGENCY

By: _____

Title: _____

Date: _____

Distribution:

- Agency
- Grantee
- State's Authorized Representative

As to form:

Shirana Johnson
 City Attorney

EXHIBIT A

Grantee agrees to comply with the following additional provisions:

1 Reporting

The Grantee will be required to complete an annual report which will include such information and will be in the format provided by Minnesota Housing. Once the Project is complete and the rental units are suitable for occupancy, and prior to final disbursement of Grant Funds, the Grantee will be required to complete a final report which will include such information and will be in the format provided by Minnesota Housing.

2 Accounting

For all expenditures of Grant Funds made pursuant to this Contract, the Grantee must keep financial records, including properly executed contracts, invoices, and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures. Accounting methods must be in accordance with generally accepted accounting principles.

3 Records Retention

The Grantee is responsible for the records retention requirements of all third parties.

4 Monitoring

The Grantee will be monitored annually. This will take place at the time of annual reporting. Monitoring could include a phone call and/or a site visit by State staff.

Prior to final disbursement of Grant Funds, the State will also ask to review the most recent disbursement records. This will include a reconciled account balance showing when Grant Funds were received by the Grantee and disbursed to the third party. Minnesota Housing reserves the right to ask for additional information.

5 Compliance with Local, State and Federal Laws

The Grantee and any third parties must comply with all local, state and federal laws, rules, regulations and ordinances, as well as any applicable State policies, including, but not limited to, the following:

(a) Recipients and subrecipients must comply with Visitability requirements at 462A.34

EXHIBIT B

Workforce Housing Development Program Disbursement Request Form



Summary

This form must be completed, signed and submitted to Minnesota Housing prior to receiving a disbursement of funds. To complete the form, enter the amount of funds you are requesting and a summary of what the funds will be used for. Have the form signed by an Authorized Representative. Submit the completed form to Katie Moore at katie.moore@state.mn.us.

Disbursement Request and Justification

Amount Requested (not to exceed one-third of the total award): _____
Use the space below to document what the funds will be used for:

Authorized Representative Signature

Authorized Representative Name: _____

Authorized Representative Title: _____

Date Signed: _____

Authorized Representative
Signature: _____



City of Duluth

411 West First Street
Duluth, Minnesota
55802

Certified Copy

Resolution: 18-0090R

File Number: 18-0090R

RESOLUTION AUTHORIZING APPLICATION FOR AND, IF AWARDED, ACCEPTANCE OF A 2018 WORKFORCE HOUSING GRANT FROM THE MINNESOTA HOUSING FINANCE AGENCY RELATED TO THE CITYVIEW FLATS LLC PROJECT

WHEREAS, the city of Duluth desires to submit an application pursuant to the Workforce Housing Development Program ("Program") for a 2018 Workforce Housing Grant from the Minnesota Housing Finance Agency ("Minnesota Housing") to support a 96-unit rental housing development, 9 of which units will be rent-restricted (the "Project"); and

WHEREAS, the Project, located at 333 West 1st Avenue North and known as CityView Flats LLC, will provide workforce housing for employees of businesses within the Duluth area; and

WHEREAS, if awarded by Minnesota Housing, the City desires to enter into a Grant Agreement pursuant to the Program in order to obtain funding from Minnesota Housing for the Project.

NOW, THEREFORE BE IT RESOLVED, that the City of Duluth is an Eligible Project Area, as defined in Minnesota Statutes Section 462A.39, subdivision 2, has the legal authority to apply for financial assistance, and has the institutional, managerial and financial capability to ensure adequate construction, operation, maintenance and replacement of the Project for its design life.

BE IT FURTHER RESOLVED, by the City of Duluth, that City staff is hereby authorized to apply for a 2018 Workforce Housing Grant from Minnesota Housing for the Project in an amount of \$800,000.

BE IT FURTHER RESOLVED, that, if awarded, the proper City officials are hereby authorized to enter into a Grant Contract and such other agreements, and amendments thereto, as are necessary to implement the Project, in order to obtain funding from Minnesota Housing in an amount not to exceed \$800,000 for the Project (the "Grant").

BE IT FURTHER RESOLVED, that the City certifies that it will use the Grant to enter into an Agreement with the Project's developer for qualified expenditures for the Project to serve employees of businesses located in the Duluth or surrounding area.

BE IT FURTHER RESOLVED, that the Grant will be matched with at least \$1 for every \$2 provided; specifically, the Grant will be matched by the City of Duluth using tax abatement financing in the net present value of \$300,000 and by the County of St. Louis using tax abatement financing in the net present value of \$300,000.

BE IT FURTHER RESOLVED, that the City certifies that the average vacancy rate for rental housing located in Duluth and in any other city located within 15 miles or less of the boundaries of the area, has been five percent (5%) or less for at least the prior two-year period.

BE IT FURTHER RESOLVED, that the Grant will not exceed twenty-five percent (25%) of the Project costs.

A motion was made that this Resolution be adopted The motion carried by the following vote:

I, Roberta A. Pirkola, City Clerk of the City of Duluth, Minnesota, do hereby certify that I have compared the foregoing passed by the city council on 1/22/2018, with the original approved and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth.

City Clerk

Roberta A. Pirkola

5-15-18

Date Certified