

**AGREEMENT
BY AND BETWEEN**

**1200 FUND, INC.
AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation hereto by the City Clerk (the “Effective Date”), by and between the CITY OF DULUTH, a municipal corporation under the laws of the state of Minnesota, hereinafter referred to as “City”, and the 1200 FUND, INC., a private, non-profit corporation under the laws of the State of Minnesota (“1200 Fund”).

WHEREAS, City is the Recipient of funding under the American Rescue Plan Act of 2021, 42 U.S.C 802 *et seq.* (the “Act”) for the purpose of assisting the City in responding to the impacts of COVID-19 on the City and its impacts on its residents and businesses; and

WHEREAS, the City has determined that one of the areas of greatest impact on the City and its residents has been the impact on low-and moderate-income families, especially those living in qualified census tracts as determined by the United States Department of Housing and Urban Development (“QCTs”) whose employment has tended to be disproportionately impacted by COVID-19; and

WHEREAS, the children of such low-and moderate-income persons have been impacted by unavailability of high-quality, affordable child care, impacting both the children themselves and impacting the employment of parents and guardians; and

WHEREAS, the City has determined that it is important and appropriate to use a portion of the funds received under the Act to encourage the development and expansion of high-quality, affordable child care facilities in the City, and especially in its QCTs; and

WHEREAS, CITY desires to provide funding in the amount of up to Four Hundred Fifty Thousand Dollars (\$450,000) to 1200 Fund to implement its Childcare Provider Expansion Program (the Expansion Program”) under the terms

and conditions hereinafter set forth to allow 1200 Fund to make grants to qualifying childcare providers to provide new and expanded childcare facilities in the City and especially within its QCTs; and

WHEREAS, City desires to provide funding in the amount of up to Fifteen Thousand Dollars (\$15,000) to 1200 Fund to allow 1200 Fund to implement a Childcare Staff Training Program (the “Training Program”) under the term sand conditions of this Agreement; and

WHEREAS, the Expansion Program and the Training Program are hereinafter jointly referred to as the “Program”; and

WHEREAS, 1200 Fund is able and willing to provide service to seek such providers and to make grants to such providers to assist them in implementing the Program; and

WHEREAS, 1200 Fund, because of the uniqueness of the character of and the demands of the Program and the need to tailor the grants from 1200 Fund to various potential grant recipients (the “Recipients”), has, by signing this Agreement, requested that it be allowed to use noncompetitive procedures to implement the Program in the most effective way.

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

I. Program Funding and Other Terms

1. Generally

A. Expansion Program

City hereby agrees to provide funding to 1200 Fund in the amount of up to Four Hundred Fifty Thousand Dollars (\$450,000), payable from City Fund 226-125-5007-6700 (Local Fiscal Recovery Funds, Finance, Financial Assistance, 1200 Fund childcare Expansion) on a reimbursable basis, to reimburse 1200 Fund for grants to Recipients under the Expansion Program for the development of new or expanded childcare facilities within the City under the terms of this Agreement.

B. Training Program

City hereby agrees to provide funding to 1200 Fund in the amount of up to Fifteen Thousand Dollars (\$15,000), payable from City Fund 226-125-5007-6701 (Local Fiscal Recovery Funds, Finance, Financial Assistance, 1200 Fund Childcare Training) on a reimbursable basis, to reimburse 1200 Fund for grants to Recipients under the Training Program to Subgrantees for the development and implementation of staff training programs for persons entering into or participating in the work of childcare.

2. Grant Documentation

Prior to extending any grant to any Recipient, 1200 Fund shall have developed and provided for the City's Director of Planning and Development (the "Director") for their approval a grant agreement form to be used by 1200 Fund in making grants to Recipients for. Said forms shall be used by 1200 Fund in making all grants hereunder, provided that if 1200 Fund wishes to make any grant under an agreement which deviates from the terms of the approved form, 1200 Fund shall secure the approval of the Director in writing in advance of making any grant under the terms of such modified form.

3. Process

1200 Fund shall use its best efforts to use a competitive, request-for-proposals process in securing applications from potential Recipients for grants under the Program. Said process shall conform substantially with the Purchasing processes of the City. In the event that 1200 Fund reasonably determines that the said process has not resulted in a demand for either or both of the Programs which can reasonably anticipated to use all of the funds made available pursuant to this Agreement, 1200 Fund may request that the Director approve 1200 Fund seeking qualified Recipients to utilize said funds on "the open market", and the Director may approve such solicitation in the exercise of their reasonable discretion.

4. Mandatory Program Terms

The 1200 Fund shall include the following mandatory terms and

conditions on any grant extended to any Recipient under the Program; 1200 Fund shall have continuing responsibility for enforcing all such mandatory terms and conditions:

A. Expansion Program

- i. To be eligible to receive a grant under the Program, a potential Recipient shall be a business entity employing fewer than Fifty (50) persons.
- ii. The grant shall result in the Recipient developing a new childcare facility or adding to an existing childcare facility which increases the net capacity for providing childcare in the City of Duluth by not less than Twenty-five (25) positions.
- iii. The opening of the grant-funded facilities shall not result in the reduction in the capacity of any childcare facilities owned or operated by Recipient or any affiliate of Recipient within a Twenty-five (25) mile radius of the City of Duluth within two (2) years of the opening of the grant-funded facilities.
- iv. 1200 Fund shall use its best efforts to insure that grant-assisted facilities are located in one of the QCTs within the City of Duluth. To the extent that this goal is not reasonably obtainable, 1200 Fund shall demonstrate that the use of the Grant funds qualifies for such use under the Act.
- v. The Recipient must commit to continuously offering childcare services in the grant-funded facilities in accordance with the terms and conditions of this agreement for not less than Two (2) Years from the date such services are first provided in said grant-funded facility.
- vi. Recipient shall be required to demonstrate at all times that the grant-funded facilities and any facilities related

thereto are fully licensed by the Minnesota State Department of Health and Human Services and that said facilities are fully compliant with all laws, rules and regulations of the City of Duluth, the State of Minnesota and the United States of America applicable to such facilities, including any limitations on the number of children that can be served by such facility.

- vii. Upon opening of a Grant-funded facility and thereafter, Recipient shall be required to demonstrate that it used its best efforts to insure that, at all times, not less than Twenty-five (25%) Percent of the children served by the grant-funded facility come from families that are Child Care Assistance Program eligible.
- viii. The amount granted to any Recipient for any project shall not exceed two-thirds (2/3s) of the eligible project costs
- ix. “Eligible project costs” for shall include only the “hard construction costs” of the new facility or of the new addition to any existing facility. “Soft costs” including design costs, construction administration costs, property acquisitions costs, legal costs, financing costs and similar costs shall not be “eligible project costs.”
- x. The maximum amount for “eligible project costs” that can be granted for any project shall not exceed One Hundred Thousand Dollars (\$100,000).
- xi. Recipients shall be required to demonstrate that all contractors, subcontractors and materialmen supplying goods or services for the construction of any new facility or any addition to any existing facility are required to provide wages and benefits constituting “prevailing wages” complying with the requirements of the City of Duluth and the State of Minnesota.

B. Training Program

- i. To be eligible to receive a Grant under the Training Program a potential Recipient must be an established training provider with a proven record of successfully providing the necessary training to potential trainees.
- ii. The training provided must meet training standards of the State of Minnesota as they pertain to the training of Childcare staff persons.
- iii. The Recipient must commit to use its best efforts to train persons who live in or work in QCTs or that commit to work in childcare facilities that primarily serve children living in QCTs. To the extent that this goal is not reasonably obtainable, 1200 Fund shall demonstrate that the use of the Grant funds qualifies for such use under the Act.

5. Reimbursement Process

Upon the making of any grant under the Program, 1200 Fund shall provide a copy of the grant agreement with each Recipient to the Director. Upon the completion of any grant-funded Program project under this Agreement (a “Project”), 1200 Fund shall provide the Director with documentation that the Project which complies with the requirements of this Agreement has been completed, that all grant funds for the Project have been expended by 1200 Fund to reimburse the subject Recipient in accordance with this Agreements, and that the 1200 Fund and said Recipient has complied with all of the requirements of this Agreement; and 1200 Fund shall supply to the Director such other documentation as the Director shall reasonably require. Upon receipt, review and approval of said documentation, the Director shall reimburse 1200 Fund for the amount granted to said Recipient; provided, however, that the City’s total reimbursement for grants made under the Expansion Program pursuant to this Agreement

shall not exceed Four Hundred Fifty Thousand Dollars (\$450,000) and that grants made under the Training Program pursuant to this Agreement shall not exceed Fifteen Thousand Dollars (\$15,000).

6. Landing Web Page

1200 Fund shall establish a landing web page on the 1200 Fund's website that describes the Program and will allow the City staff to review and provide comments and suggestions for marketing and branding for the Program.

7. Reporting

1200 Fund will provide regular reports Program grants to the Executive Director which include a description of the Program facilities and training funded. 1200 Fund will provide quarterly reports for years 1 through 3 and biannual reports for the remainder of the term of the Agreement.

8. Additional 1200 Fund Responsibilities

In addition to providing the Program services provided of in this Agreement the 1200 Fund acknowledges and agrees:

- A. The City's award of funds to the 1200 Fund (FEIN 41-1520829) constitutes a sub-award of SLFRF. This is federal funding provided to the City by the United States Department of the Treasury under Assistance Listing Number 21.027. The City made its application (SLT- 1646) for its awarded funds of \$58,117,859 on 5/11/21, received notice of application acceptance on 5/19/21, and received its first payment of federal funds on 5/19/21. City Council Resolution 21-0515R, adopted on 7/19/21, formally acknowledged receipt of the funds and the City's intended use of the funds.
- B. The 1200 Fund constitutes a sub-recipient. As a sub-recipient, the 1200 Fund must follow Uniform Administrative Guidance as referenced in Part D of the Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds issued by the United States Department of the Treasury. The 1200 Fund agrees to follow all guidance either directly through its involvement in providing the services or indirectly in the 1200

Fund's role of assisting the City with its compliance requirements.

- C. The 1200 Fund shall comply with, and assist the City in complying with, the Treasury Guidance. This includes providing the City with access to 1200 Fund's audit reports, financial records, project performance reports and other additional data the City requires in order to sufficiently meet its obligations under the terms of the SLFRF grant funding.
- D. The 1200 Fund shall not use, directly or indirectly, or permit others to use, directly or indirectly, funds supplied by the SLFRF for any purpose that would violate any SLFRF requirements.
- E. The 1200 Fund maintains internal controls, policies, and procedures to ensure appropriate oversight of fiscal management and to ensure the avoidance of fraud, negligence, and mismanagement of funds.
- F. The 1200 Fund shall maintain records related to the SLFRF program for no less than six years after the termination of this agreement.
- G. The 1200 Fund shall cause to be performed a Single Audit of the 1200 Fund's records if it expends more than \$750,000 in federal funds during any fiscal period during the duration of this agreement.
- H. The funds awarded are not R&D related.
- I. The 1200 Fund agrees that it will only be reimbursed for direct cost of providing the Program services and will not charge any indirect costs to the City.

II. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and 1200 Fund only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

1200 Fund represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the Director.

3. Data and Confidentiality, Records and Inspection

A. 1200 Fund must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by 1200 Fund under this Agreement. 1200 Fund agrees to hold City, its officers, and employees harmless from any claims resulting from 1200 Fund's failure to comply with this law. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by 1200 Fund. If 1200 Fund receives a request to release the data referred to in this clause, 1200 Fund must immediately notify City and consult with City as to how 1200 Fund should respond to the request. 1200 Fund's response to the request must comply with applicable law.

B. Records shall be maintained by 1200 Fund in accordance with requirements prescribed by the City and Generally Accepted Accounting Principles ("GAAP") and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.

C. 1200 Fund will ensure that all costs shall be supported by properly executed invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

- D. 1200 Fund shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- E. 1200 Fund shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. 1200 Fund will also permit the City 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.

4. 1200 Fund Representation and Warranties

- 1200 Fund represents and warrants that:
- a. 1200 Fund and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
 - b. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the 1200 Fund is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the 1200 Fund contrary to the terms of any instrument or agreement.
 - c. There is no litigation pending or to the best of the 1200 Fund's knowledge threatened against the 1200 Fund affecting its ability to carry out the terms of this Agreement or its ability to carry out the terms and conditions of any other matter materially affecting the ability of the 1200 Fund to perform its obligations hereunder.

d. The 1200 Fund will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2024, whichever is sooner, unless terminated earlier as provided for herein; except that any of the terms and conditions of this Agreement that, by their nature extend beyond the aforesaid date, shall continue to be force and effect as long as necessary for 1200 Fund to fulfill said obligations under this Agreement.

City may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by 1200 Fund under this Agreement shall become the property of the City and 1200 Fund shall promptly deliver the same to the City.

6. Independent Contractor

a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting 1200 Fund as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. 1200 Fund and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of 1200 Fund's employees while so engaged, and any and all claims whatsoever on behalf of 1200 Fund's employees arising out of employment shall in no way be the responsibility of City.

1200 Fund's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless 1200 Fund from liability or judgments arising out of intentional or negligent acts or omissions of 1200 Fund or its employees while performing the work specified by this Agreement.

b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

c. 1200 Fund expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

6. Indemnity

To the extent allowed by law, 1200 Fund shall defend, indemnify and hold the City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the 1200 Fund's a) breach of this Agreement or b) its negligence or misconduct or that of its agents or contractors in performing the services hereunder or c) any claims arising in connection with 1200 Fund's employees or contractors, or d) the use of any materials supplied by the 1200 Fund to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

7. Insurance

1200 Fund shall obtain and maintain for the term of this Agreement the following minimum amounts of insurance from insurance companies

authorized to do business in the State of Minnesota.

- a. Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, shall be in a company approved by the City; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. the City shall be named as an Additional Insured by endorsement under the Public Liability and Automobile Liability. Upon execution of this Agreement, 1200 Fund shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. 1200 Fund shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- c. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- d. City does not represent or guarantee that these types or limits of coverage are adequate to protect the 1200 Fund's interests and liabilities.

9. Defaults and Remedies

a. General Events of Default

The following shall be deemed to be general events of default by 1200 Fund under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

1. 1200 Fund shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of 1200 Fund pursuant to this Agreement and such failure

shall continue for a period of thirty (30) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to 1200 Fund of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

2. 1200 Fund makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to 1200 Fund or its business; or 1200 Fund files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or 1200 Fund files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of 1200 Fund's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of 1200 Fund of any trustee, receiver or liquidator of any material part of 1200 Fund's properties.

b. General Remedies

Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by 1200 Fund:

1. Seek and be entitled to monetary damages from 1200 Fund for any damages incurred by City as a result of 1200 Fund's default.
2. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent 1200 Fund's violation of the terms and conditions of this Agreement or to compel 1200 Fund's performance of its obligations hereunder.
3. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

10. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

CITY: City of Duluth
411 W First Street
City Hall Room 418
Duluth MN 55802
Attn: Director of Planning and Economic
Development

1200 Fund: Duluth 1200 Fund, Inc.
411 W First Street
City Hall Room 418

11. Civil Rights Assurances

1200 Fund, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, 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 work to be done pursuant to this Agreement.
- b. 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.

12. Laws, Rules and Regulations

1200 Fund agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth with respect to their respective agencies which are applicable to its activities under this Agreement.

13. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including

all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial

appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

CITY OF DULUTH, a Minnesota
Municipal corporation

DULUTH 1200 FUND, INC., a
Minnesota nonprofit
Corporation

By: _____
Emily Larson
Its Mayor

By: _____
its _____

Attested:

By: _____

Chelsea Helmer
Its City Clerk

Dated: _____

Approved:

City Attorney

Countersigned:

City Auditor