

MINNESOTA STATEWIDE AFFORDABLE HOUSING AID ONE ROOF COMMUNITY HOUSING

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”), ONE ROOF COMMUNITY HOUSING, a Minnesota non-profit corporation (the “Developer”).

WHEREAS, at the recommendation of the City of Duluth Community Development Committee and by action of the City Council (City Council Resolution No. 22-0779R), Developer was allocated \$725,000 in HOME-ARP funding to support their Community Land Trust (CLT) program; and

WHEREAS, the City of Duluth subsequently learned from the U.S. Department of Housing and Urban Development that homeownership programs are ineligible for HOME-ARP funding; and

WHEREAS, the City of Duluth amended its allocation of \$725,000 in HOME-ARP funds to support Developer’s Brae View project (City Council Resolution No. 25-0094R), and in exchange Developer agreed to accept \$725,000 in Statewide Affordable Housing Aid to support their mission to provide affordable housing (the “Project”); and

WHEREAS, the Project through the Developer’s CLT Program meets Minnesota Statewide Affordable Housing Aid Qualifying Project requirements, specifically:

- Supporting nonprofit affordable housing providers in their mission to provide safe, dignified, affordable and supportive housing; and

WHEREAS, the City received Statewide Affordable Housing Aid distributions in 2023 and 2024, and will continue receiving distributions on an annual basis.

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 Developer in the amount of up to Seven-Hundred-and-Twenty-Five Thousand Dollars (\$725,000.00) payable from Fund 210-030-3213-5458.

2. Use of Funds

- A. The parties agree that funds granted to Developer shall be used exclusively for the purpose of supporting their mission to provide affordable housing.
- B. The parties agree that funds granted to Developer will help no fewer than twenty-two (22) households secure affordable homeownership by

December 31, 2026. Developer shall provide the City with copies of closing documents and income verifications to demonstrate this standard has been met.

3. Affordability

The Developer agrees that any housing supported with these funds will comply with the following Minnesota Statewide Affordable Housing Aid requirements for affordability:

Homeownership: Household income must not exceed 115% of the greater of state or area median income as determined by the United States Department of Housing and Urban Development.

4. Ineligible Costs

The following costs are ineligible uses of these funds: conducting a housing or zoning study; costs to create a Housing Improvement Area; staff and services related to general housing quality and licensure, such as code enforcement; staff and administrative costs for operation of an HRA or county or city housing department; commercial, industrial or public space development projects; projects located outside of Minnesota.

5. Disbursement of Funds

The City agrees to make payments in two installments. The first shall be in the amount of \$545,000 and made promptly following the execution of this Agreement and not later than August 31st, 2025. The second shall be in the amount of \$180,000 and made promptly following the distribution of the second half of the City's 2025 Statewide Affordable Housing Aid allocation and not later than December 31st, 2025.

6. 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 Developer 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.

7. Business Subsidy Agreement

The provisions of this Article constitute the "business subsidy agreement" for purposes of the Minnesota Business Subsidy Act (Minnesota Statutes Sections 116J.993-995 and its successor statute) and the City of Duluth's Business Subsidy Policy.

A. Definitions

For the purposes of determining whether the Business Subsidy Goal set forth in Paragraph D of this Section 7 has been met, the following terms shall have the meanings hereinafter ascribed to them:

1. Benefit Date: means the date upon which the Developer receives the business subsidy.
2. Report Period: means that calendar year, from January 1st of any year through December 31st of that calendar year for the period prior to the year in which a report referred to in Paragraph E of this Section 7 is required.

B. Business Subsidy.

The business subsidy provided to Developer consists of the City's grant assistance in an amount up to \$725,000.00

C. Need for Subsidy.

Without the assistance to be provided pursuant to this Agreement, the cost of development for the Project is not economically feasible. But for the assistance to be provided for hereunder, the Project could not reasonably be expected to be constructed in the foreseeable future.

D. Public Purpose.

The public purpose of the assistance to be provided pursuant to this Agreement is to construct a Project which will help no fewer than twenty-two (22) households secure affordable homeownership, enhance the City's tax base, and achieve redevelopment on sites which would not be developed without assistance. In accordance with §116J.994, subdivision 4, the City has determined after a public hearing that the creation or retention of jobs is not a goal of this project. Accordingly, the wage and job goals are set at zero.

E. Business Subsidy Goal.

Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Developer agrees that on or before December 31, 2026, it shall have completed the Project in accordance with this Agreement (the "Business Subsidy Goal"). On the Compliance Date, the Developer shall have:

1. Through its mission, helped no fewer than twenty-two (22) households secure affordable homeownership.

F. Reporting Requirement.

On or before March 1st of each year following the commencement of this Agreement, Developer shall file with the City and for two (2) years after the Benefit Date, reports on forms developed by the Minnesota Department of Employment and Economic Development ("DEED") setting forth Developer's progress in meeting the Business Subsidy Goal during the preceding Reporting Period. Said report shall include the information required in Minnesota Statute §116J.994, subdivision 7, and shall be accompanied by such documentation as the Director of Planning and Economic

Development shall reasonably request in writing. All such reports shall be signed on behalf of Developer by an officer of Developer with authority to bind Developer.

G. Penalty.

If the City does not receive the reports described in Paragraph E of this Section 7, it will send to Developer a warning by certified mail within one week of the required filing date. If within 14 days of the post marked date of the warning the reports are not made, Developer agrees to pay the City a penalty of \$100 for each subsequent day until the report is filed, up to a maximum of \$1,000.

H. Special Event of Default if Business Subsidy Goals Not Met.

Developer agrees that if the Business Subsidy Goal of Project is not met by December 31, 2026, as determined in the sole discretion of the City, Developer shall not receive any City grant assistance under this Agreement.

I. Additional Enforcement.

In the event that Developer shall fail for any reason whatsoever to meet the reporting requirements of Paragraph F of this Section 7 fully and completely and in a timely manner as required, said failure shall be deemed to be a material breach of the terms and conditions of this Agreement and, in addition to the rights and remedies available to the City pursuant to Paragraph G, the City shall be entitled to withhold any payment due from the City under this Agreement and to withhold the performance of any obligation owed by the City under this Agreement until Developer's reporting obligations pursuant to this Section 7 have been fully complied with. Further, the City shall be entitled to reimbursement for any reasonable costs, including the value of staff time and attorneys' fees and costs, incurred by the City to secure Developer's compliance with the reporting requirements.

J. Other Financial Assistance.

In addition to the City's grant assistance provided under this Agreement, the Developer has received or expects to receive as part of this Project the following financial assistance from other "grantors" as defined in the Business Subsidy Act: \$72,928.59 in CDBG HUD funding, \$79,758.87 in HOME funding, \$3,110,464 in Minnesota Housing Finance Agency funding, and \$900,000 in New Market Tax Credit funding.

8. Enforcement Provisions

The City may terminate this Agreement for cause upon at least 30 days' prior written notice to the Developer specifying the cause for termination, any period for cure by the Developer, 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 Developer and the City, until there is a cure by the Developer, 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 Developer 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 Developer, and the City may withhold any reimbursement to the Developer on this and other agreements between the Developer and the City for the purpose of set-off until such time as the exact amount of damages due City from the Developer can be determined. For the purposes of this Agreement, cause may include any of the following:

- A. Failure, for any reason, of the Developer to fulfill any of the terms or obligations under this Agreement, or any other agreement between the Developer and the City, in a timely and proper manner.
- B. The making of any arrangement with or for the benefit of Developer's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Developer that it is bankrupt; or filing by the Developer of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Developer unless dismissed within forty-five (45) days.
- C. Submission by the Developer 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 Developer 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 Developer to comply with affordability requirements set forth herein.
- I. 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 Developer pursuant to this Agreement.
- B. Demand immediate and full repayment of the amount granted to Developer on a pro rata basis if Developer fails to secure affordable homeownership for all twenty-two (22) households. The City shall have the right to demand up to \$32,954.55 be repaid for each household below that threshold that does not secure affordable homeownership.
- C. Seek injunctive relief to enforce the terms and conditions of this Agreement.
- D. Seek such other relief as may be available to the City at law or in equity.
- E. Terminate this agreement.

9. 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.

10. Independent Contractor

Developer's employees and agents shall not be considered the City's employees. Developer certifies 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 Developer's employees and any claims made by a third party as a consequence of any act or omission on the part of Developer's employees are in no way the City's obligation or responsibility.

11. Indemnification

The Developer agrees 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 or Developer arising out of or resulting from any actual or alleged act or omission of the Developer, its 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 Developer shall appear and defend all

lawsuits against the City growing out of such injuries or damages.

12. 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 Developer if sent by regular mail, postage prepaid, addressed to One Roof Community Housing, 12 East 4th Street, Duluth, MN 55805; or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

13. Compliance with All Laws

The Developer agrees 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.

14. Waiver

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

15. 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.

16. 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.

17. Authorization to Execute Agreement

The Developer represents 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 Developer 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 Developer 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

ONE ROOF COMMUNITY HOUSING

By _____
Mayor Date

By _____ Date _____

Its _____

IRS Tax ID No.

Attest::

City Clerk Date

Countersigned:

City Auditor Date

Approved as to form:

City Attorney Date