

**AGREEMENT FOR PROFESSIONAL SERVICES**  
**DULUTH ECONOMIC DEVELOPMENT AUTHORITY**  
**&**  
**HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH,**  
**MINNESOTA**

THIS AGREEMENT, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY ("DEDA") and the HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH, MINNESOTA ("Service Provider") for the purpose of rendering services to DEDA.

WHEREAS, DEDA desires to utilize Service Provider's services to implement and administer DEDA's Irving Exterior Housing Renovation Forgivable Loan Program; and

WHEREAS, Service Provider has represented that it is qualified and willing to perform said services.

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

1. Services to be Performed.

Service Provider will implement and administer the Irving Exterior Housing Renovation Forgivable Loan Program in accordance with the scope of services set forth in Exhibit A and the Irving Exterior Housing Renovation Forgivable Loan Program Guidelines, as may be amended, on file in the DEDA Office, 402 City Hall, Duluth, MN (the "Guidelines"). Services shall be delivered pursuant to the schedule set forth in Exhibit A. The mortgage lien to be provided by the property owner in favor of DEDA may be subordinated to other liens in the discretion of the Executive Director. In the event any loan monies are returned, Service Provider will enter into contracts with additional Owners as defined in the Guidelines, but in no event shall such contracts be entered into after December 31, 2021.

2. Delivery of Services.

\_\_\_\_\_ shall assume primary responsibility for the delivery of professional services required by this Agreement.

3. Compensation.

It is agreed between the parties that the Service Provider's maximum compensation for services provided herein shall not exceed Twenty-Four Thousand and no/100ths Dollars (\$24,000.00), payable from Fund 865, Org. 8607, Object 5319. Specifically, Service Provider shall be paid Nine Hundred Twenty-Three and 07/100ths Dollars (\$923.07) upon closing of each forgivable loan (for up to 13 loans and Nine Hundred Twenty-Three and 08/100ths Dollars (\$923.08) when the construction work on the residential unit is complete and final payment has been made (for up to 13 loans). All bills for services rendered shall be submitted to DEDA's Executive Director or designee (the "Executive Director"). Additionally, Service Provider shall be provided a total of One Hundred Fifty-Six Thousand and no/100ths Dollars (\$156,000) in forgivable loan funds to be provided to owners pursuant to the Guidelines and the Agreement between the owner and Service Provider, payable from Fund 865, Org. 8607, Object 5319. Said funding will be provided to the Service Provider upon approval of each of forgivable loan up to the amount of loan funding approved for each residence.

4. General Terms and Conditions.

A. Standard of Performance.

Service Provider agrees that all services to be provided to DEDA pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for the provisions of services of this type.

B. Amendments. Any alterations, variations, modifications or waivers of terms of this Agreement including contract price shall be binding upon DEDA and Service Provider only upon being reduced to writing and signed by a duly authorized representative of each party.

C. Assignment. Service Provider 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 Executive Director.



D. Data and Confidentiality.

- (1) DEDA agrees that it will make available all pertinent information, data and records under its control for Service Provider to use in the performance of this Agreement, or to assist Service Provider wherever possible to obtain such records, data and information.
- (2) All reports, data, information, documentation and material given to or prepared by Service Provider pursuant to this Agreement will be confidential and will not be released by Service Provider without prior authorization from DEDA.
- (3) All notes, reports, records and other data prepared under this Agreement shall be deemed to become the property of DEDA upon creation. Service Provider agrees that all work created by Service Provider for DEDA is a "work made for hire" and that DEDA shall own all right, title and interest in and to the work, including the entire copyright in the work. Service Provider further agrees that to the extent the work is not a "work made for hire," Service Provider will assign to DEDA ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Service Provider agrees to execute, at no cost to DEDA, all documents necessary for DEDA to perfect its ownership of the entire copyright in the work. Service Provider represents and warrants that the work created or prepared by Service Provider will be original and will not infringe upon the rights of any third party, and Service Provider further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

E. Records and Inspections.

(1) Establishment and Maintenance of Records.

Records shall be maintained by Service Provider in accordance with requirements prescribed by DEDA 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.

(2) Documentation of Costs.

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

(3) Reports and Information.

Service Provider shall provide to the Executive Director monthly reports detailing the services provided in the previous month. Service Provider shall be responsible for furnishing to the Executive Director any other records, data and information he may require pertaining to matters covered by this Agreement.

(4) Audits and Inspections.

Service Provider shall ensure that at any time during normal business hours and as often as DEDA may deem necessary, there shall be made available to DEDA for examination, all of its records with respect to all matters covered by this Agreement. Service Provider will also permit DEDA 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.

5. Contract Period.

This Agreement shall commence on November 1, 2015, and shall expire on December 31, 2023, unless earlier terminated as provided for herein.

6. Termination of Services.

DEDA may, by giving written notice specifying the effective date thereof, terminate this Agreement in whole or in part, with or without cause. In the event



of termination, all property and finished or unfinished documents, materials, and other writings prepared by Service Provider under this Agreement and all escrowed funds shall be promptly delivered by Service Provider to the DEDA at the address provided in Paragraph 10. Service Provider shall be entitled to compensation for the performance of any unreimbursed services satisfactorily performed by it prior to the date of termination. In the event of termination of this Agreement due to breach by Service Provider, DEDA shall retain all remedies available to it, and DEDA shall be relieved from payment of any fees with respect to the services of Service Provider which gave rise to such breach.

7. Independent Contractor.

- A. The relationship between Service Provider and DEDA shall be that of an independent contractor. Nothing herein shall in any way make or create any employer-employee relationship between the DEDA and Service Provider. Except for compensation provided in Paragraph 3 of this Agreement, Service Provider's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, 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 (Public Employees Retirement Association). Further, DEDA shall in no way be responsible to defend, indemnify or save harmless Service Provider from liability or judgments arising out of acts or omissions of Service Provider 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. Service Provider expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

8. Indemnity.

To the extent allowed by law, Service Provider shall defend, indemnify and hold

DEDA 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 Service Provider'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 Service Provider's employees or contractors, or d) the use of any written materials supplied by the Service Provider to the DEDA unless such material was modified by DEDA and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

9. Insurance.

A. Service Provider shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota.

- (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
- (2) Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by DEDA; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names City and DEDA as an additional insureds.
- (3) Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 30 days' notice prior to any cancellation or modification shall be required; and in such event, Service Provider agrees to provide DEDA with either evidence of new insurance coverage



conforming to the provisions of this paragraph which will provide unbroken protection to DEDA and the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the statute of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

- (4) DEDA and the City shall be named as Additional Insureds under the Public Liability and Automobile Liability policies, or as an alternate, Service Provider may provide Owners-Contractors Protective policy, naming itself, DEDA and the City. Service Provider to provide Certificates of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provision. Such certificate will be provided prior to execution of this Agreement and certificates showing continued maintenance of such insurance shall be on file with DEDA during the term of this Agreement. Service Provider shall also provide evidence of Professional Liability Insurance and Statutory Minnesota Workers' Compensation Insurance prior to execution and during the term of this Agreement. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Service Provider's interests and liabilities.
- (5) The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms - (a) ISO Additional Insured Endorsement (CG-2010 pre-2004) and (b) Notice of Cancellation Endorsement (IL 7002); or their equivalent as approved by the Duluth City Attorney's Office.

- B. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Service Provider, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Service Provider, its employees, agents and representatives in

the negligent performance of work covered by this Agreement.

10. Notices.

Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to DEDA as follows: DEDA, Attn: Executive Director, 402 City Hall, Duluth, Minnesota 55802; and addressed to Service Provider as follows: Housing and Redevelopment Authority of Duluth, Minnesota, 222 East Second Street, 55805, or to such other persons or addresses as the parties may designate to each other in writing from time to time.

11. Laws, Rules and Regulations.

Service Provider 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 with respect to their respective agencies which are applicable to its activities under this Agreement. The services provided hereunder shall be provided without regard to age, race, color, national origin, creed, religion, sex, marital status, status with regard to public assistance or disability, or sexual orientation.

12. Choice of 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. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.

13. No Third Party Rights.

Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

14. 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.

15. Entire Agreement.

This Agreement, including all exhibits, constitutes the entire Agreement between



DEDA and Service Provider and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

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

**DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY**

**HOUSING AND REDEVELOPMENT  
AUTHORITY OF DULUTH, MINNESOTA**

By: \_\_\_\_\_  
Its President

By \_\_\_\_\_

Attest:

Its \_\_\_\_\_  
Title of Representative

By: \_\_\_\_\_  
Its Secretary

\_\_\_\_\_

## **EXHIBIT A**

### **Irving Exterior Renovation Forgivable Loan Program**

#### **HRA-Agency Scope of Work:**

1. The Agency will qualify residential owners by ensuring that the following:
  - a. An application has been filed;
  - b. The Property is located within the Eligible Area of Assistance;
  - c. The ownership of the Property;
  - d. The age of structure;
  - e. The Property is current on real estate property tax rolls and current under the ten year repayment plan;
  - f. That the property is Economically Rehabilitable (i.e. documentation that the cost of repair does not exceed the real estate value of the property);
  - g. The improvements are intended primarily for dwelling structures;
  - h. The proposed improvements are Eligible Improvements;
  - i. The Matching Funds are available; and
  - j. The property complies with flood plain, historic preservation, and any other applicable environmental requirements.
2. The Agency will inspect the residences to ensure it is structurally sound and to document all life safety issues.
3. The Agency will place Matching Funds and Forgivable Loan Funds in a non-interest bearing escrow account.
4. The Agency will conduct the bidding process.
5. The Agency will prepare all required documents including an agreement between the Agency and the residential owner and a mortgage lien with DEDA as the mortgagee, all in a form acceptable to DEDA's attorney.
6. The Agency will ensure that the documents are properly executed and that the mortgage lien is filed in the office of the St. Louis County Recorder.
7. The Agency will provide copies of the agreements and the recorded mortgage liens to DEDA.
8. The Agency will gather documentation of payment (labor and materials waivers) from the contractor(s) and will make progress payments payable to both the owner and the contractor(s).



9. The Agency will perform a final inspection for conformance with the specifications of the contract awarded to the contractor(s) and to ensure that all life safety items identified have been corrected. The Agency will make final payment payable to both the owner and the contractor(s).
10. The Agency will promote the program and will use Equal Housing Opportunity logo on all correspondence, media releases, posters and flyers in connection with the Program.
11. The Agency will advise owners of rental units to utilize commercial media (newspapers and announcements to housing referral agencies) to advertise vacant units and to utilize the Equal Housing Opportunity logo and slogan in these announcements to the extent required by the Fair Housing Act.
12. The Agency will maintain accurate and detailed records related to the work it performs under this Program.

**HRA- Agency Schedule:**

1. Timeline
  - a. November 1, 2015 to February 28, 2016: HRA enrolls homeowners in the program
  - b. February 2016 to March 31, 2016: HRA completes scopes of work for residential units
  - c. March 2016 to April 2016: HRA conducts project bidding
  - d. April 2016 to August 2016: construction
2. Payment Schedule

HRA will be paid per housing unit renovation: fifty (50%) percent when the forgivable loan is approved and the remaining fifty (50%) percent when the construction is completed and final payment is made.