

2016 EMERGENCY SOLUTIONS GRANT PROGRAM
PROJECT NAME
AGENCY

THIS AGREEMENT, entered into this 1st day of April, 2016, by and between the City of Duluth (the City), and _____ (the Agency);

WHEREAS, the City is the recipient of United States Department of Housing and Urban Development (HUD) funds under the Emergency Solutions Grant (ESG) Program (CFDA 14.231), for the purpose of providing emergency assistance to homeless persons; and

WHEREAS, the City established the Project pursuant to Resolution _____ approved December 14, 2015, and

WHEREAS, the Agency is desirous of serving as a sub-grantee of the City for the purpose of providing such assistance and is willing and able to do so;

NOW, THEREFORE, the City and the Agency do mutually agree as follows:

1. Use of Grant Fund

The Agency does hereby agree to use the funds allocated to this Project in conformance with Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program, 24 CFR Parts 91 and 576, and the Scope of Services and Budget attached as Exhibit A.

2. Match Funds

The Agency does hereby agree to make matching contributions to supplement the program in an amount that equals the amount of ESG funds provided by the City. Matching funds must be provided after the date of the signed grant agreement. Match contributions may include cash and non-cash contributions and costs paid by program income.

3. Documents to be Incorporated

The parties agree that the following documents shall be incorporated by reference and considered part of this Agreement as if set forth herein:

- A. The HUD regulations applicable to this Agreement, including, but not limited to, the regulations contained in 24 CFR Parts 91 and 576, and as the same may be, from time to time, amended.

B. All other Federal, State and Local laws, charter provisions, ordinances, and regulations which are, or may become, applicable to activities under this Agreement, and as the same may be, from time to time, amended.

C. Federal Circulars:

2 CFR, Part 225 - for cost principles

A-102 - for administrative requirements

A-133 - for audit requirements

2 CFR, Part 230 - for cost principles

2 CFR, Part 215 - for administrative requirements

D. Agency Application

E. City's Monitoring Policy

4. Reimbursement of Expenses

For implementation of the activities under this Grant Agreement, the City agrees to reimburse the Agency for eligible costs incurred by the Agency, and specified under the "ESG Funds" portion of the budget (Exhibit A), in an amount not to exceed _____ Dollars (\$_____). Reimbursement under the provisions of this Agreement shall be limited to the line items shown in Exhibit A. Any increase or decrease of an individual line item in the Budget must have prior written approval by the Manager of the City's Community Development Division (Manager/Division Director). In addition, no budget lines may be added after the Project has begun operation without prior CD Manager written approval. Requests for reimbursement shall be made no more frequently than quarterly and shall be made only for amounts over One Hundred Dollars (\$100.00) in the format as shown in Exhibit C. Reimbursement requests shall be accompanied by the programmatic report and only such documentation as the City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly reimburse the Agency for the "Eligible Costs" up to the amount set forth above. Reimbursement requests containing insufficient documentation as determined by the City must be revised within fifteen (15) calendar days of notice to the Agency by the City of said insufficiency or the Agency shall forfeit the right to reimbursement of all items appearing in said request.

In the event the last date to request reimbursement falls on a holiday or a weekend, the Agency shall submit a reimbursement request and accompanying documentation the following business day. The City will not reimburse the Agency for any cost incurred for which a request for reimbursement is not received by the City within fifteen (15) days of the expiration or termination of this Agreement. The requirements specified heretofore in this paragraph may be waived by the Manager in writing. The City shall withhold reimbursement of costs if the Agency has not submitted quarterly statistical and narrative reports,

and if project did not meet its proposed service goals, which are approved by the Manager, or if the Agency is not in compliance with the terms of any other agreement with the City.

No final payment shall be made pursuant to this Agreement until such time as the final programmatic reports are submitted and approved by the Manager. No final payment shall be made pursuant to this Agreement until such time as final programmatic reports are submitted and approved by the Manager. All reimbursement payments shall be made out of the 2016 Federal Program Fund 262 Community Development - Agency 020 - Project Account No. CD16ES-.

5. Term

The term of this Agreement shall be deemed to commence on April 1, 2016, the date of this Agreement notwithstanding, and shall continue through March 31, 2017, unless terminated earlier as provided for herein. Notwithstanding the above, the term of this Agreement may be extended for a period not to exceed twelve (12) months upon prior written approval of the Manager. Within fifteen (15) days following the expiration or termination of this Agreement, the Agency's right to seek reimbursement shall cease and the City shall make no further reimbursements to the Agency under this Agreement. In the event the term of the Agreement or its termination falls on a holiday or weekend, then the Agency shall submit all required documentation and reports on the following business day. Any unexpended balance remaining at the expiration of the term of the Agreement shall be reprogrammed. No activity may begin before the environmental review clearance date.

6. Programmatic Reports

The Agency shall submit programmatic reports on a quarterly basis, or when additional data reports are requested, and at such time as a final request for reimbursement is submitted prior to the end of the contract term in the form as shown in Exhibit D. Quarterly reports must be submitted throughout the term of this Agreement, whether or not activity occurs or funds are disbursed in a given quarter. Reports shall be submitted to the Manager on the following dates:

<u>Performance Period</u>	<u>Report Due Date</u>
April 1-June 30, 2016	July 15, 2016
July 1-September 30, 2016	October 15, 2016
October 1-December 31, 2016	January 15, 2017
January 1-March 31, 2017	April 15, 2017

In the event that the date that programmatic reports and reimbursement requests are due falls on a holiday or a weekend, the Agency shall submit reports on the following business day. A final year-end programmatic report shall be submitted to the Manager within fifteen (15) days of the last Project activity, or within fifteen (15) days of the contract end date. No final payment shall be made pursuant to this Agreement until all required program reports have been submitted and approved. Should an Agency fail to submit final year-end statistical and narrative reports, any and all current and future Community Development contract activities shall be deemed inactive until such time as the final program reports are submitted by the Agency and approved by the Manager.

7. Records

A. Establishment, Maintenance and Inspection of Records

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD and/or the City with respect to all matters covered by this Agreement. Sufficient records must be established and maintained to enable the Agency and the City to determine whether ESG requirements are being met. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

B. Source Documentation

Any and all documentation relating to the Eligible Costs paid by the Agency for which a request for reimbursement is being made shall be clearly identified and readily accessible to authorized representatives of the City or HUD upon written notification by same to Agency. The Agency shall insure that all Eligible Costs are supported by properly executed payrolls, time records, invoices, contracts, vouchers or other documentation evidencing in proper detail the nature and propriety of the charges.

C. Additional Reports and Records

The Agency shall be responsible for furnishing to HUD or the City such statements, records, data and information as HUD, or the City may request pertaining to matters covered by this Agreement, including agency homeless data collected through in HMIS or data requested by Community Development staff in preparation of the Consolidated Annual Performance and Evaluation Report.

8. HMIS

A. Reporting

The Homeless Management Information System (HMIS) is a secure, confidential electronic data collection system used to determine the nature and extent of homelessness. The HMIS system is used to report to HUD on an annual basis and to aid in local and CoC-wide policy and planning and to track progress on HEARTH outcomes.

The sub recipient is required to enter ESG participant data into HMIS (24 CFR 576.400(f)) on a regular and consistent basis which is defined as data entry within two weeks from the time of intake and discharge (Entry/Exit) and weekly for reporting service entries. Data will be monitored for timely entry, data completeness and quality as part of the annual monitoring process and CAPER Report.

The Agency must ensure that data on all persons served and all projects and activities carried out within the parameters of the ESG Program are entered into the applicable community-wide data collection and reporting HMIS system in accordance with HUD's standards (24 CFR 578) as described in its HMIS Data Standards Manual , A Guide for HMIS Users, <https://www.hudexchange.info/resources/documents/HMIS-Data-Standards-Manual.pdf> for CoCs and System Administrators and the HMIS Data Dictionary, <https://www.hudexchange.info/resources/documents/HMIS-Data-Dictionary.pdf>, both were released May 2014, and the ESG Program HMIS Manual, <https://www.hudexchange.info/resources/documents/ESG-Program-HMIS-Manual.pdf>. This includes the universal data elements, program specific data elements described in the data-standards manual and any local data elements required.

If the agency is a victim services provider, it may use a comparable database to collect the same data that non-DV providers are required to collect such as client-level data over time (i.e. longitudinal data) and provide unduplicated aggregated reports based on the data.

All sub-recipients will be required to meet the following minimum standards for HMIS/ESG data collection and reporting;

- i. Sub-recipients must enter into an HMIS Agency Participation Agreement and attend HMIS user training if they have not already attended (DV shelters are excluded).
- ii. All sub-recipient staff that participates in HMIS data entry activities must have regular and convenient access to a computer with a high speed Internet connection.

- iii. All sub-recipient staff that participates in HMIS data entry activities must have a unique assigned user name and password that they can access regularly during work hours. Each such user must sign a Code of Ethics statement prior to receipt of their log in and password from Wilder.

B. HMIS Privacy Compliance

1. Agency Privacy Notice –Provided to the Client. A sample is provided by MNHMIS.
2. Required text is included in a sample for agencies that are integrating with pre-existing notices.
3. Post your Privacy Notice on your Web Site (if one exists) and in facility locations where client data is collected.
4. Use a Privacy Script that summarizes the agency Notice and explains the MNHMIS Data Sharing Plan.
 - a. What is MNHMIS?
 - b. Why does this agency use it?
 - c. Security
 - d. Privacy Protection
 - e. Benefits and Risks for clients
 - f. Agency Data Sharing Plan
5. On Display – HUD Public Notice
6. Agency Board Certified Confidentiality Policy
7. MNHMIS Release of Information notice customized for St. Louis County CoC sharing plan. This document is signed by consumers during the Privacy discussion and must be kept in the client file.
8. HIPAA compliant Authorization to Release Confidential Information

9. System-Wide Coordination

A. System Coordination with Continuum of Care

Agencies receiving ESG funding shall participate in the development, coordination and integration of ESG activities into the City's Coordinated Entry System developed under the St. Louis County Continuum of Care to provide a strategic, community-wide homeless crisis response system to prevent and end homelessness for the City of Duluth and St. Louis County.

B. System Coordination with Other Federal, State and Local Resources

If the Agency receives multiple sources of funding, in addition to ESG Program funds, to carry out homeless housing and service activities within the City of Duluth and the St. Louis County Continuum of Care, the Agency shall provide a summary of the amount(s), source and use

of these funds to the Community Development office upon request. Information may be used to in planning and to coordinate homeless activities within the City of Duluth and the CoC in effort to create a more efficient and effective, streamlined homeless crisis response system.

C. System Coordination with Mainstream Resources

In an effort to create a more coordinated, efficient and effective homeless crisis response system, the Agency shall integrate any homeless housing and services activities they provide with any/all appropriate mainstream programs available in Duluth such as social services, housing, health, education, employment and other programs and services for which homeless individuals and families and those at risk of homelessness may be eligible.

D. Coordinated Entry and Assessment

Under the St. Louis County Continuum of Care and the Statewide Minnesota Continuum of Care coordination efforts, the Agency agrees to participate in the development and implementation of a county-wide Coordinated Entry (CE) and Assessment System that will align with statewide CoC CE system process in accordance with the regulations established by HUD for CoC and ESG program subrecipients and within the locally established policies, procedures and CoC and ESG written standards.

10. Inspections

A. Audits and Inspections

The Agency shall ensure that at any time during normal business hours and as often as the City, HUD, the Comptroller General of the United States, the Legislative Auditor and/or the State Auditor may deem necessary, there shall be made available to the City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor for examination, all of its records with respect to all matters covered by this Agreement, including HUD's grantee Consolidated Annual Performance and Evaluation Report. The Agency will also permit the City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor 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.

B. Independent Financial Audit

If the Agency expends \$500,000 or more from all federal funding sources, including funds expended under this Agreement, during the Agency's fiscal year, the Agency shall submit an A-133 audit to the City within nine (9) months of the end of the Agency's fiscal year. If the Agency expends less than \$500,000 from all federal funding sources, including funds received under this Agreement, during the Agency's fiscal year, the Agency shall submit a financial statement audit conducted in accordance with all effective auditing standards with the management letter to the City within nine (9) months of the end of its fiscal year.

11. Special Obligations

A. Shelter and Housing Standards

Whenever ESG funds are used under the Emergency Shelter component for renovation or shelter operations, the building must meet the minimum standards for safety, sanitation, and privacy provided in §576.403(c). <https://www.hudexchange.info/resources/documents/ESG-Emergency-Shelter-and-Permanent-Housing-Standards.pdf>.

If cash or non-cash contributions (e.g. funds or staff time) used for renovation or shelter operations are to be contributed to the recipient's ESG program as match, the emergency shelter must meet the minimum standards, because all matching contributions must meet all requirements that apply to the ESG funds provided by HUD (§576.201(c)).

Note: The same standards apply regardless of the amount of ESG funds involved. For example, a shelter that receives \$1,000 in ESG funds to replace a water heater is subject to the same standards as a shelter that receives \$80,000 for operating costs.

The Emergency Solutions Grants (ESG) Program rule at 24 CFR 576.403 (c), establishes minimum standards for safety, sanitation, and privacy in emergency shelters funded with ESG, and minimum habitability standards for permanent housing funded under Homelessness Prevention and the Rapid Re-housing components of ESG. The Agency cannot use ESG funds to help a program participant remain in or move into housing that does not meet the minimum habitability standards provided by HUD.

The subrecipient must maintain documentation of compliance with the minimum standards for Emergency Shelter activities in the program's records.

B. Shelter Operations

Any emergency shelter that receives ESG funds for shelter operations (including minor repairs) must meet the minimum safety, sanitation, and privacy standards under §576.403(b).

In addition: If the recipient established any other standards that add to or exceed HUD's minimum standards, the subrecipient must ensure that the shelter meets these standards.

- The shelter must be inspected on-site to ensure that it meets the minimum standards before ESG funds are provided for shelter operations.
- The shelter must meet all standards for the entire period during which ESG funds are provided for operating the emergency shelter. For example, if operating assistance is provided for 24 months, the shelter must remain in compliance with the minimum standards for those 24 months.
- If the shelter fails to meet the minimum standards, ESG funds (under either shelter operations or renovation) may be used to bring it up to the minimum standards.
- If the shelter continues to receive ESG shelter operating funds over a period of time, then a periodic, on-site inspection must be conducted each time the shelter receives funds. For example, if the shelter receives an annual allocation of funds from the ESG recipient, an inspection must be conducted annually.
- If the subrecipient moves the shelter to a new site or structure, that new site or structure must meet all emergency shelter standards for the remaining period that ESG funds are used for operating expenses.

Note: Minimum Standards Do Not Apply to Essential Services and HMIS Activities

- The minimum standards for emergency shelters apply only when ESG funds are used for shelter operations, conversion, major rehabilitation, or other renovation.
- Essential services provided under Street Outreach and/or Emergency Shelter Stabilization Services do not trigger the minimum standards for emergency shelter or the minimum standards for permanent housing. This is because there is no unit to inspect; these services are provided for persons who are sleeping in emergency shelters or with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground.

- Likewise, the minimum standards do not apply to an emergency shelter (or other organization) receiving ESG funds only for HMIS costs.

C. Minimum Standards for Permanent Housing

The subrecipient cannot use ESG funds to help a program participant remain in or move into housing that does not meet the minimum habitability standards under §576.403(c). This restriction applies to all activities under the Rapid Re-housing and Homelessness Prevention components, including rental assistance and housing relocation and stabilization services.

In addition:

- If an eligible household needs homelessness prevention assistance to remain in its existing unit, the assistance can only be provided if that unit meets the minimum standards.
- If an eligible household needs homelessness prevention or rapid re-housing assistance to move to a new unit, the assistance can only be provided if the new unit meets the minimum standards. The unit the household is leaving does not need to be inspected.
- If a program participant applies for several units, only the unit into which they ultimately decide to move must be inspected. The subrecipient must be sure that documentation of compliance with the ESG habitability standards for ESG assistance is in the program participant's file.

If the program participant needs Rapid Re-housing or Homelessness Prevention assistance to obtain housing, the unit into which the program participant is moving must be inspected before the program participant signs the lease and before any ESG rental assistance payments or housing relocation and stabilization services specific to the unit into which the program participant will be moving are provided.

For one-time assistance (such as rental arrears, a security deposit, etc.), the unit for which assistance is being provided—either for households that remain in place (prevention) or for households that are moving to a unit (rapid re-housing)—must meet the minimum standards for permanent housing at the time the assistance is provided (e.g., when the rental arrears payment is made).

1. Homelessness Prevention
When ESG Rental Assistance and/or Housing Relocation and Stabilization Services are provided under the Homelessness Prevention component to help a program participant remain in

or move into permanent housing, the ESG minimum habitability standards apply to either the unit the program participant is staying in or to a new unit, if the participant is moving. Even if a minimal amount of financial assistance, such as utility arrears/payments or housing stability services (case management), is provided to a program participant under the Prevention component, the habitability standards apply to the unit and must be documented in the program participant's file.

2. Rapid Re-housing

When ESG Rental Assistance and/or relocation and stabilization services are provided under Rapid Re-housing to help a program participant move into a new permanent housing unit, the habitability standards apply to the unit into which they are moving and must be documented in the program participant's file. If Rapid Re-housing services are being provided before a unit has been identified, no habitability inspection is required until there is a unit to inspect. If assistance with arrears for a prior unit is needed as part of the rapid rehousing assistance, no habitability inspection is required for the old unit on which the arrears are owed, so long as the program participant will be rapidly re-housed in a different unit.

Note: If the unit does not meet the habitability standards at the time of the inspection, recipients are prohibited from using ESG funds to pay for assistance provided before the unit meets the standards. Further, funds spent before a unit meets the habitability standards may not be counted as match.

In all cases, if ESG funds are used for ongoing assistance (such as rental assistance, utility payments, etc.), the subrecipient must take appropriate measures to ensure the unit meets the minimum habitability standards for permanent housing for the duration of the assistance. If the HUD should monitor the project and discovers that a unit does not meet the minimum standards, then HUD may determine that the recipient is out of compliance with the ESG requirements.

Subrecipients must document compliance with the ESG permanent housing and emergency shelter standards, as applicable, and this documentation must include inspection reports, as required under §576.500(j).

If the City or HUD monitors and discovers that the subrecipient is not in compliance with the emergency shelter or permanent housing habitability standards, remedial actions or sanctions may be required as set forth in §576.501(b).

An ESG Minimum Habitability Standards Checklist for Emergency Shelters and Permanent Housing can be found at:

<https://www.hudexchange.info/resources/documents/ESG-Emergency-Shelter-and-Permanent-Housing-Standards-Checklists.docx>

B. Eligibility

The Agency shall provide housing and the services described in Exhibit A to persons identified as homeless or at-risk of homeless as defined in 42 U.S.C.5032(a) and to maintain records documenting the homeless or at-risk status of the program participant in their file, in accordance with 24 CFR Part 576.

C. Access by City

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

E. Assistance to the Homeless

The Agency shall provide homeless individuals and families with assistance in obtaining appropriate supportive services and other available assistance in conformance with the requirements of 24 CFR Parts 91 and 576.

F. Confidential Data

Where applicable, the Agency agrees to develop and implement procedures to ensure the confidentiality of records pertaining to the provision of family violence prevention or treatment services under this Agreement pursuant to 24 CFR 576.56. The Agency shall comply with the Minnesota Government Data Practices Act, MN Statute Chapter 13, and MN Statute Section 268.38 relating to transitional housing programs, where applicable.

G. Emergency Shelter Commitment

The Agency agrees to continue to use all property with regard to which ESGP funds are expended for providing emergency shelter and other services described herein in accordance with the applicable period of use restrictions set forth in 42 U.S.C. 11375.

H. Publicity Requirements

In any materials made public with regard to the activity or the Project, the Agency agrees to include a reference to the assistance provided pursuant to this Agreement by City.

12. Lead-based Paint Notification

The lead-based paint requirements exist to protect vulnerable families from potential health hazards. To prevent lead-poisoning in young children, ESG grantees must comply with the Lead-Based Paint Poisoning Prevention Act of 1973 and its applicable regulations found at 24 CFR 35, Parts A, B, H, J, K, M, and R. As agencies that provide assistance to and advocate on behalf of disadvantaged populations, it is important to understand that the lead rule is a tool that helps you ensure the safety and well-being of program participants.

Under ESG, the rule is that a lead-based paint visual assessment must be completed for all units that meet the three following conditions:

- The household living in the unit is being assisted with ESG financial assistance (rent assistance, utilities assistance, utility/security deposits, or arrears).
- The unit was constructed prior to 1978.
- A child under the age of six is or will be living in the unit.

Under ESG, the lead requirements apply regardless of whether a household is remaining in an existing unit or moving to a new unit. The visual assessment must be completed prior to ESG assistance being provided, and annually thereafter.

The ESG subrecipient is responsible for ensuring that property owners and managers meet the lead-based paint requirements. It may be helpful for subrecipients to think about the requirements in two categories:

- A. Disclosure requirements. Disclosure requirements are triggered for ALL properties constructed prior to 1978. These requirements require that lessors (property owners or managers) provide tenants with:
- HUD's disclosure form for rental properties disclosing the presence of known and unknown lead-based paint; *AND*
 - A copy of the "Protect Your Family from Lead in the Home" pamphlet

13. Independent Contractor and Indemnity

It is agreed that nothing contained herein is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between

the parties hereto. The Agency's officers, agents, servants and employees shall not be considered employees of the City. Any and all claims which may arise on behalf of the Agency's officers, agents, servants and employees while engaged in performing any work under this Agreement, or arising out of employment, including, without limitation, the Workers' Compensation Act of the State of Minnesota and claims of discrimination, shall in no way be the responsibility of the City. The Agency's officers, servants and employees shall not be entitled to any compensation or right of benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the Agency agrees to defend, indemnify and save harmless the City and its officers, agents, servants and employees from any and all claims, actions, demands, suits, losses, judgments, costs, expenses and damages, direct and indirect, incidental and consequential, including but not limited to attorneys' fees, asserted by any person(s) including agents or employees of the City or the Agency, arising out of or resulting from any actual or alleged act or omission of the Agency, its officers, agents, servants or employees in connection with or relating to the performance of service under this Agreement. On ten (10) days' written notice from the City, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

14. Termination and Remedies

A. Termination

The City may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The City may also terminate this Agreement for cause upon written notice to the Agency specifying the cause for termination, any period for cure by the Agency, and the date of termination. In the event of termination, all property acquired with funds furnished by the City and finished or unfinished documents, data, studies and reports purchased or prepared by the Agency under this Agreement shall be disposed of in accordance with the City's directives and in accordance with applicable laws and regulations. The Agency shall be entitled to compensation for performance of any unreimbursed services satisfactorily performed under this Agreement prior to the termination date. 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 Agency and the City, until there is a cure by the Agency, a waiver by the City, or the Agreement is terminated.

Further, the Agency shall not be relieved of the liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Agency, and the City may withhold any reimbursement to the Agency on this and other agreements between the Agency and the City for the purpose of set-off until such time as the exact amount of damages

due the City from the Agency can be determined. For the purposes of this Agreement, cause shall include any of the following:

1. Failure by the Agency to fulfill, for any reason, its obligations under this Agreement, or any other agreement between the Agency and the City, in a timely and proper manner, including failure to comply in any respect with the ESG Program, the Supplementary General Conditions, or any provision of this Agreement.
2. Failure to submit independent financial audits as required pursuant to this Agreement.
3. Failure to submit complete statistical and narrative reports on the dates set forth in this Agreement.
4. Agency submission of reports or requests for payment made to the City that are untimely, incorrect or incomplete in any material respect.
5. Ineffective or improper use of funds provided under this Agreement.
6. Suspension or termination of the ESGP grant to the City by HUD under which this Agreement is funded.
7. Failure to initiate activity under this Agreement, programmatically or by failure to make payment requests, for the first six (6) months after the commencement of this Agreement.
8. Noncompliance with the laws, ordinances, rules, regulations, Executive Orders, directives and codes of the United States of America, State of Minnesota and the City and their respective agencies which are now or later become applicable to Agency activities under this Agreement, including, but not limited to, all applicable HUD regulations.
9. Payment of fees made by the Agency to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.
10. The making of any arrangement with or for the benefit of Agency's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Agency that it is bankrupt; or filing by the Agency of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Agency unless dismissed within forty-five (45) days.

B. City's Rights Upon Termination for Cause

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

1. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.
2. Seek injunctive relief to enforce the terms and conditions of this Agreement.
3. Seek such other relief as may be available to City at law or in equity.

15. Subcontractors

The Agency represents that it will utilize only its own personnel in the performance of services under this Agreement. The Agency shall not make any subcontract with any other party without the prior written consent of the Manager. Consent by the Manager to subcontract, assign, or otherwise dispose of any portion of this Agreement shall not relieve the Agency of any of the responsibility for fulfillment of this Agreement.

16. Assignability

The Agency shall not assign any right or interest in this Agreement or transfer any interest in same without the prior written consent of the Manager, provided, however, that claims for money due or to become due to the Agency from the City under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be promptly furnished to the City.

17. Conflict of Interest

A. Interests of Public Officials

No public official shall receive any benefit under this contract, including members or delegates of the Congress of the United States (Congress), the Minnesota Legislature, the Duluth City Council, or other federal, state or local official. The Agency shall comply with the Federal and local Conflict of Interest policy.

B. Organization Conflict of Interests\

The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the Agency, a parent or

subsidiary of the Agency. No agency may, with respect to individuals or families occupy housing owned by the Agency, or any parent or subsidiary of the Agency, carry out the initial evaluation required under 24 CFR Part 576.401 or administer homelessness prevention assistance under Part 24 CFR Part 576.103.

18. Notices

Notices to the City provided for herein shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the City at the Community Development Division, Room 208 City Hall, Duluth, Minnesota 55802; and notices to the Agency if sent by regular United States mail, postage prepaid, addressed to _____, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

19. Non-discrimination and Equal Opportunity

The Agency hereby agrees that in the use of the facilities and in the provision of assistance and services under the ESG Program, the Agency will comply with all nondiscrimination and equal opportunity requirements of 24 CFR part 5, 24 CFR 576.57, and the Minnesota Human Rights Act. Further, the Agency shall take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons, consistent with Title VI and Executive Order 13166.

20. Drug and Alcohol Free Policy

The Agency acknowledges that it is responsible for developing and enforcing a policy designed to ensure that facilities with regard to which ESGP grant funds are expended are free from the illegal use, possession or distribution of drugs or alcohol by persons working at or using those facilities.

21. 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.

22. Waiver

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

23. 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.

24. No Third-Party Rights

This Agreement is to be construed and understood solely as an Agreement between the Agency and the City and shall not be deemed to create any rights in any other person. No person shall have the right to make a third party beneficiary claim of this Agreement or of any of the terms and conditions hereof, which, as between the City and the Agency, may be waived at any time by mutual agreement between the City and the Agency.

25. Amendments

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

26. Entire Agreement

This Agreement, including all exhibits and documents incorporated by reference herein, constitutes the entire Agreement between the parties and supersedes all prior written and oral agreements and negotiations relating to the subject matter hereof.

27. Authority to Execute Agreement

The Agency represents to the City that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of the Agency who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of the Agency on its behalf will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions hereof.

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

CITY OF DULUTH

Agency

By _____
Mayor

By _____
Its _____

ATTEST:

Agency Federal (IRS) Taxpayer
Identification Number

City Clerk

COUNTERSIGNED:

City Auditor

APPROVED AS TO FORM:

City Attorney

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, the _____ of _____, the Agency, on behalf of the Agency.

Notary Public