

20XX HOME PROGRAM RENTAL DEVELOPMENT

PROJECT NAME

AGENCY / CHDO NAME

THIS GRANT AGREEMENT, entered into this _____ day of XXXXX, 20xx, by and between the City of Duluth, a HOME Program Participating Jurisdiction (PJ), and _____ (Agency) and Housing and – *if needed* - Redevelopment Authority of Duluth (HRA) (Disbursing Agent)

WHEREAS, Agency has applied to City for an allocation of HOME Funds for the purpose of the below-described Project; and

WHEREAS, said funding has been approved by the PJ pursuant to Resolution xx-xxxxR, adopted on _____.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, PJ does hereby grant to the Agency the sum of (\$_____) under the following terms and conditions:

1. Program Adopted

The HOME Program provisions contained in 24 CFR Part 92 (the Program) are hereby adopted by reference and deemed to be a part of this Agreement. All activities carried on by the Agency pursuant to this Agreement shall be deemed to be governed by the Program.

2. Project Description

It is hereby agreed between the parties that the funds granted to the Agency under this Agreement shall be used exclusively for the purpose of the Project as stated in the attached Exhibit A and as authorized in the Program. Exhibit A shall include the Project location; HOME activity to be undertaken; the total number of rental units and the size of the rental units; the number of HOME-assisted and non-assisted units in the Project; the number of High HOME Rent units and Low HOME Rent units; whether or not the project involves land assembly and subdivision, environmental remediation, lead-based paint treatment, demolition or other site preparation, relocation, or infrastructure development; special features of the Project; designation of the HOME-assisted units as fixed or floating; the number and type of accessible units; and the tasks to be performed by the Agency in their role as (sponsor) (owner) (developer) of the Project.

3. Term

The term of this Agreement shall commence on the date first above written and shall continue for _____ (xx) years from and after the date of the IDIS Notification Certificate provided by PJ to Agency, unless terminated sooner as provided for herein. The Project shall be completed and all eligible costs incurred not later than _____, 20xx. Notwithstanding the above, the time for completing the Project and incurring eligible costs may be extended for a period of time not to exceed six (6) months upon the prior written approval of the Manager of the Community Development Division (the Manager).

4. Use of HOME Funds

The parties agree that the HOME funds granted to the Agency under this Agreement shall be used strictly in compliance with the sources and uses of funds statement, Project budget and schedule, and maximum and actual per unit HOME subsidy amount as set forth in Exhibit B attached hereto and made a part hereof. Additionally, to be eligible for reimbursement, costs shall conform in character to those shown in Exhibit B and shall not exceed the amounts set forth in said Exhibit B without the prior written approval of the Manager. In addition, all costs under this Agreement must be in conformance with the appropriate Federal Office of Management and Budget Circular listed below:

A-87, A-102, A-128 -- Local Public Agencies
A-122, A-133 -- All Other Entities

5. Construction Plan

Prior to commencement of construction of the Project, the Agency agrees to submit a plan for its construction showing the nature and character of all work to be undertaken and setting forth the proposed time frames for said construction (the Construction Plan). Said Construction Plan shall be subject to the approval of the Manager, which approval shall not be unreasonably withheld. In the event the Manager rejects the Construction Plan for any reason, the parties agree that they will work together in an expeditious manner to come to a mutually agreeable Construction Plan. In the event that the parties cannot agree to such a Construction Plan, this Agreement shall terminate. Upon completion, the Project shall comply with the City of Duluth Housing Code, Chapter 29A, as amended.

6. Affordability Period

The Agency shall execute the Declaration of Restrictive Covenants in the form attached hereto as Exhibit C. The Declaration of Restrictive Covenants requires that HOME-assisted units meet the affordability requirements of 24 CFR 92.252.

Upon acquisition or, if previously acquired, prior to the reimbursement of any costs by HOME funds, the Agency agrees to record the Declaration of Restriction Covenants in the office of the St. Louis County Recorder and to pay all costs associate therewith. Upon recordation, the Agency shall provide to PJ an executed original of the Declaration of Restrictive Covenants showing the date and document numbers of record or a duly certified copy of the executed originals.

Upon completion of the Project by the Agency, in accordance with this Agreement, the Agency will submit to the PJ a HOME Program Rental Completion Report. City will promptly enter the Project data from the Completion Report into the Integrated Disbursement and Information System (IDIS), and PJ will provide a Notification Certificate to Agency. Agency agrees to record the Notification Certificate in the Office of the St. Louis County Recorder and to pay all costs associated therewith.

Repayment of the HOME funds will be required if the housing does not meet the affordability requirements for a period of _____ years, commencing on the date of the issuance of the Notification Certificate.

7. HOME Income Limits

Tenants of HOME units in the Project shall meet the household income targeting levels as specified by the number of High HOME rent and Low HOME rent units in the attached Exhibit A. Annual household income will be determined utilizing 24 CFR Part 5 definition, as is used in the Section 8, public housing, and low-income housing tax credit programs. The Agency shall re-examine the income of each tenant household living in a HOME unit at least annually.

8. HOME Rent Limits

The rent limits applicable to the HOME units in this Project shall be the High HOME rent and Low HOME rent limits as indicated by the number and type of HOME units specified in the attached Exhibit A.

The PJ shall review and approve the rents proposed by the Agency for the HOME units, as well as the monthly allowance proposed by the Agency for utilities and services to be paid by the tenants. The Duluth Area HOME Program Limits - Duluth Area HOME Rents schedule and the Section 8 Allowances for Tenant-Furnished Utilities for the current year are attached as Exhibit D, and shall serve as the initial rent and utility limits for the Project. The PJ will provide to the Agency on an annual basis updated rent and utility limits for the HOME units. The maximum monthly rent shall be recalculated by the Agency and reviewed and approved by the PJ annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rent is subject to the provisions of outstanding leases, and must comply with State of Minnesota Statutes related to proper written

notification.

Units qualify as HOME units despite a temporary noncompliance if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to PJ are being taken to ensure that all vacancies are filled in accordance with this agreement until the noncompliance is corrected. Tenants who no longer qualify as low-income households must pay as rent thirty percent (30%) of the household's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code.

Changes in HOME rent limits and in median income over time should be sufficient to maintain the financial viability of the Project within the qualifying rent standards. Regardless of changes in rent limits or median income, the qualifying rents are not required to be lower than the HOME rent for the Project that is in effect at the time of Project commitment. The PJ, with prior HUD approval, may adjust the qualifying rents established for the HOME units in the Project only if the PJ and HUD find that an adjustment is necessary to support the continued financial viability of the Project and only by an amount that the PJ and HUD determine is necessary to maintain continued viability of the Project.

9. Project Requirements

Prior to any tenant occupying a HOME unit, the Agency shall submit to PJ written tenant selection policies and lease documents for approval by the PJ. Tenant selection policies will comply with the requirements of 24 CFR 92.253(d). The lease must comply with HOME Program requirements related to the term of the lease, termination of tenancy, specification of HOME rents, and proper notices; comply with applicable Minnesota law regarding rental housing; and shall not contain any of the prohibited clauses identified in 24 CFR 92.253(b).

10. Religious Activities

The Agency shall not require tenants of HOME units to participate in inherently religious activities such as worship, religious instruction, or proselytizing. If Agency is a faith-based organization, Agency may carry out its mission related to religious beliefs, provided that HOME funds do not financially support inherently religious activities. It is acceptable for Agency's Board of Directors be selected based on religious practice, as well as religious references in mission statements and other governing documents. Agency agrees to serve all eligible households without regard to religion, and shall not restrict HOME units to people of a particular religion or denomination. Eligibility of an applicant for HOME assisted housing must not rely on the applicant's participation in religious activities or programs.

11. Property Standards

Upon completion of the Project, and throughout the duration of this Agreement and the term of the Declaration of Restrictive Covenants attached as Exhibit C, the Agency warrants and agrees that it will be in compliance with all housing maintenance codes, building and fire codes applicable to structures of its type in the City of Duluth. The Agency also agrees to obtain and maintain a City of Duluth Rental Property License for the Project.

If the Project was built prior to 1978, the Agency warrants and agrees that upon completion, the Project will meet the requirements of HUD's Lead Safe Housing Rule (24 CFR Part 35). The Lead Safe Housing Rule Subparts that apply to the Project are identified in Exhibit E.

All construction/rehabilitation work to be funded under this Agreement shall be performed by a contractor or contractors selected pursuant to a competitive bidding process, or by employees of the Agency. All contractors shall be required to provide public liability insurance, automobile liability insurance, builder's risk insurance, and workers' compensation insurance in forms and amounts acceptable to PJ.

12. Labor Standards

Every contract for the construction and/or rehabilitation of housing that includes 12 or more HOME assisted units must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Hours and Safety Standards Act, listed in Exhibit E.

13. Displacement and Relocation Requirements

The Agency shall take all necessary steps possible to minimize displacement of tenants. If such displacement can not be avoided, Agency shall be required to demonstrate that it has complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as listed in Exhibit E. At PJ's request, Agency shall submit a written Relocation Plan for approval by the Manager.

14. 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 Agency receiving HOME funds or persons who exercise or have exercised any functions or responsibilities with

respect to HOME 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. Furthermore, no employee, agent, consultant or officer of the Agency may occupy a HOME assisted housing unit in the Project, except for an employee or agent of the Agency who occupies a housing unit as the project manager or maintenance worker.

15. Affirmative Marketing

For every project that includes five or more HOME assisted units, the Agency shall be required to demonstrate that it, or an agent acting on its behalf, has made good-faith efforts to attract eligible persons from all racial and ethnic groups to the Project during the term of this Agreement and the term of the Declaration of Restrictive Covenants. Prior to any funds being reimbursed under this Agreement, the Agency shall submit, and have approved by the Manager, an Affirmative Marketing Plan. The PJ reserves the right to annually review Agency's records documenting affirmative marketing actions, and Agency agrees to take any corrective actions PJ may require when affirmative marketing requirements are not met. Further, Agency shall not discriminate against an applicant who holds a certificate of participation under CFR Part 882 (Rental Certificate Program) or a rental voucher under 24 CFR Part 887 (Rental Voucher Program) or who is a participant in a comparable HOME tenant-based rental assistance program.

16. Reimbursement of Project Costs

PJ agrees that it will reimburse the Agency for the costs of work conforming to those specified in Exhibit B which are eligible for reimbursement under the Program up to the full amount of the grant provided herein. The Agency shall only request disbursement of HOME funds when the funds are needed to pay eligible costs, and only in the amount needed for such costs. The Agency may apply to the PJ, through the Disbursing Agent, for such reimbursement not more frequently than monthly for expenses incurred in implementing the Project, and only for amounts over One Hundred Dollars (\$100.00). The Agency's draw requests shall be accompanied by such documentation as PJ shall deem reasonably necessary to determine that the Project has been completed to that level and that payments for materials and services rendered to the Project and the Project property are due and payable. Upon the Disbursing Agent's certification to PJ that the draw request is payable and in conformance with the terms and conditions of this Agreement, PJ shall promptly pay the certified amount. The Disbursing Agent will ensure a retainage of _____ % of the amount of HOME funds is withheld until the Project is completed and all related Project reports and documents submitted to PJ. PJ will not reimburse costs incurred on or prior to December 31 in any year if those

expenses have not been included in a request for reimbursement which has been received by PJ prior to January 15 of the following year. In the event that January 15 falls on a holiday or a weekend, the Agency may submit the request the following business day. The above requirements may be waived by the Manager in writing. All sums payable under this Agreement shall be paid as follows:

_____ Dollars (xxx,xxx) from 20xx HOME Program Fund 260,
Agency 020, CD0xHM - CH0x-xxxx.

Notwithstanding the above, the PJ shall be under no obligation to reimburse the Agency, and this contract shall be deemed null and void, in the event that an environmental review process has not been satisfactorily completed as determined in the sole discretion of the PJ.

17. Disbursing Agent (if required)

Disbursing Agent hereby agrees to act as disbursing agent on behalf of PJ for the purpose of disbursing funds granted to the Agency pursuant to this Agreement. Disbursing Agent agrees that it will be responsible for ensuring that all work performed by the Agency pursuant to this Agreement is done in accordance therewith; for ensuring that contractors and material suppliers are paid for their work thereon; and for ensuring conformance with the requirements herein. Disbursing Agent shall review all change orders to ensure adequate funds are available to reimburse costs, and the costs and construction activities are necessary and reasonable, and that the PJ and Agency are in agreement with the change order prior to the Disbursing Agent approval of any change order. Upon receipt of the draw requests from the Agency, Disbursing Agent agrees to inspect the Project and the documentation submitted with the draw requests to ensure that said payment requests are properly certified to PJ, and to certify the same to PJ for payment if appropriate. Upon satisfactory completion of construction / rehabilitation and final inspection of the Property to ensure Code compliance, Disbursing Agent agrees to, with the Agency, submit to the PJ the appropriate IDIS HOME Completion Report. Disbursing Agent agrees that it will be responsible for ensuring that there are no liens or lienable debts outstanding with regard to the improvements to the Property; and that all payments and documentation therefor are in conformance with the applicable OMB circulars. Upon receipt of payment on any draw request from PJ, Disbursing Agent agrees to pay the drawn amount to the Agency and its contractors and material suppliers. Payment for Disbursing Agent's services under this Agreement are provided through Duluth Property Rehabilitation Program.

18. Other Program Requirements

The Agency shall comply with all applicable federal and state laws and regulations as described in 24 CFR Part 92, subpart H inclusive, listed as Exhibit E and attached.

19. Provisions for Community Housing Development Organization (CHDO)

Prior to execution of this Agreement, Agency shall provide to PJ, documentation proving its status as a Community Housing Development Organization (CHDO). CHDO proceeds shall be reported and paid to the PJ upon receipt in a form and time frame as determined by the PJ. No HOME funds awarded under this Agreement are to be used for project-specific technical assistance or site control loans. If the Agency intends to own and manage the Project, the Agency will establish tenant participation in management decisions, fair lease and grievance written procedures, and submit these written procedures to City for approval by the Manager.

21. Reports and Records

The Agency shall be responsible for furnishing to HUD or the PJ such statements, records, data and information as HUD or the PJ may require pertaining to matters covered by this Agreement. In addition to the requirements contained in the Part II, "Supplementary General Conditions for Federally and/or City Assisted Activities," the Agency agrees that it shall prepare and forward to the PJ such information as is required in order for the PJ to meet the requirements of HUD's grantee Consolidated Annual Performance and Evaluation Report. The Agency shall promptly furnish to the PJ any and all financial statements; financial reports; and audits prepared by or on behalf of the Agency in the ordinary course of its business which relate, directly or indirectly, to the provision of services under the Project and this Agreement as soon as the same are developed by or on behalf of the Agency.

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

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD or the PJ with respect to all matters covered by this Agreement. Except as otherwise authorized by HUD, such records shall be maintained by the Agency for a period of six (6) years after the expiration of the term of this Agreement and the affordability period. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

The Agency 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,

and these documents pertaining in whole or in part to the Project shall be treated as records by the Agency.

The Agency shall ensure that at any time during normal business hours and as often as the PJ, 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 PJ, 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. The Agency will also permit the PJ, 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.

Agency shall maintain income records of all tenants who rent any HOME assisted units for the entire period of this Agreement. Annually, the Agency shall provide PJ with information on rents and occupancy of HOME assisted units, including demographic information of tenants, in order to demonstrate the Project's compliance with HOME Program requirements regarding qualification as affordable housing.

22. Enforcement Provisions

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

The affordability requirement, as required by this agreement, shall be enforced by the Declaration of Restrictive Covenants (Exhibit C), as shown by the executed recorded original or duly certified copy of the executed original provided by Agency to PJ.

The PJ may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The PJ may 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. Notwithstanding the above, the PJ 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 PJ, until there is a cure by the Agency, a waiver by the PJ, 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 PJ. In the event that the Agreement is terminated for cause, PJ

shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

Further, the Agency shall not be relieved of the liability to the PJ for damages sustained by the PJ by virtue of any breach of this Agreement by the Agency, and the PJ may withhold any reimbursement to the Agency on this and other agreements between the Agency and the City of Duluth for the purpose of set-off until such time as the exact amount of damages due the PJ from the Agency can be determined. For the purposes of this Agreement, cause may include any of the following:

- A. Failure, for any reason, of the Agency to fulfill any of the terms or obligations under this Agreement, the Declaration of Restrictive Covenants, or any other agreement between the Agency and the PJ or City, in a timely and proper manner.
- B. 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.
- C. Submission by the Agency to the PJ of reports, audits or requests for payment that are untimely, incorrect or incomplete in any material respect.
- D. Ineffective or improper use of funds provided under this Agreement.
- E. Suspension, termination, reduction or elimination by the HUD or by the Congress of the United States of the grant to the PJ under which this Agreement is funded.
- F. 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 HUD.
- G. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.
- H. Failure to complete all work on the Project as provided for herein.
- I. The abandonment of the property by the Agency or the conversion of the property to any use other than that of housing for low- and moderate-income families as provided for herein.

J. Failure to operate the Project in compliance with the HOME affordability requirements for the period of affordability.

K. Failure to record the Declaration of Restrictive Covenants or the IDIS Certificate of Notification as provided for herein.

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

L. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.

M. Seek injunctive relief to enforce the terms and conditions of this Agreement.

N. Seek such other relief as may be available to PJ at law or in equity.

23. Anti-Lobbying

Agency shall comply with the anti-lobbying legislation, ensuring that no federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Further, if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

24. Subcontractors/Assignability

The Agency shall not make any assignment of this Agreement or subcontract with any other party without the prior written consent of the Manager; provided, however, that claims for money due or to become due to the Agency from the PJ under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the PJ. The Manager hereby consents to the Agency subcontracting with subcontractor(s) selected pursuant to competitive bidding process who are performing the construction / rehabilitation work. 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.

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. Maintenance and Insurance

Agency agrees to keep all dwelling units in the Project in good condition and repair, fully tenantable, in compliance with all applicable codes and requirements and not to remove or demolish any dwelling units thereon; to complete or restore promptly and in good and workmanlike manner any part of any dwelling unit which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished to the Project; to pay all lawful taxes when due; to comply with all laws affecting said Project or requiring any alterations or improvements to be made thereon; not to commit or permit any waste thereof; not to commit, suffer or permit any action thereon in violation of law. The Agency shall further carry fire and extended coverage insurance on the Project in an amount equal to the full value of the Project and contents, as constructed, and public liability insurance in amounts reasonably determined adequate by PJ. Proof of said insurance shall be provided to the PJ upon commencement of this Agreement. Such policy of insurance shall contain a provision that thirty (30) days' advance notice in writing shall be given to the PJ prior to termination, cancellation or modification of such insurance

27. Publicity Requirements

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

28. Independent Contractor

The Agency's employees and agents shall not be considered PJ employees. Agency certifies that it is in compliance with Minnesota Statute 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 Agency's employees and any claims made by any third party as a consequence of any act or omission on the part of Agency's employees are in no way the PJ's obligation or responsibility.

29. Indemnification

The Agency agrees to defend, indemnify and save harmless the PJ and hold PJ, 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 PJ 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 this Agreement. On ten (10) days' written notice from PJ, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

30. Notices

Notices to PJ provided for herein shall be sufficient if sent by regular mail, postage prepaid, addressed to the Office of Community Development, Room 407 City Hall, Duluth, Minnesota 55802; notices to the Agency if sent by regular 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.

31. Documents to be Incorporated

The parties agree that the following documents, as may be amended from time to time, are incorporated by reference and made a part of this Agreement as if fully set forth herein:

- A. Annual Action Plan;
- B. City's Monitoring and Financial Policy;

32. Debarment

The agency shall ensure that no contractor or material suppliers providing labor or materials for the Project nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation from any covered transaction.

33. Compliance with All Laws

The Agency 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.

34. No Third-Party Rights

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

35. Waiver

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

36. 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.

37. Entire Agreement

This Agreement, including all exhibits and all documents incorporated by reference, 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.

38. Authorization to Execute Agreement

The Agency represents to the PJ 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 will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions thereof.

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 _____

IRS Tax ID No. _____

Attest::

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
_____, 20xx, by _____, the
_____ of the Agency.

Notary Public