

**2016 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
ECONOMIC DEVELOPMENT
PROJECT AGREEMENT**

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

WHEREAS, the City has received U. S. Department of Housing and Urban Development (HUD) funds under the Community Development Block Grant (CDBG) Program (CFDA 14.218); and

WHEREAS, the primary objective of the CDBG Program is the development of viable urban communities, including decent housing and a suitable living environment and expanding economic opportunities principally for persons of low and moderate income; and

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

WHEREAS, the City desires to enter into an agreement for services to implement the above project, and the Agency is willing and able to provide said services.

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

1. Use of Grant Funds

The Agency shall implement the "_____" (the Project) in accordance with the Scope of Services, Project Budget and reimbursement formula attached as Exhibit A and as outlined in the Agency=s funding proposal on file in the City=s Community Development Division (the Division). Assistance under the Project shall be targeted to those individuals/families meeting the most current HUD regulations and guidelines for assistance to low- and moderate-income individuals. The Agency shall use HUD=s current income guidelines (Exhibit B) when determining whether assistance shall be provided under the terms of this Agreement. Documentation of income shall be the annual income as defined under Section 8 (Part 5) Housing Assistance Payment Program method as prescribed by HUD in 24C FR 570.609. Agency agrees that CDBG funds shall be only used to provide services to residents of the City of Duluth, Minnesota.

2. 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. Agency=s funding proposal entitled A _____@ dated, _____, 2015;
- B. Scope of Services and Project Budget (Exhibit A). In the event of a conflict between Exhibit A and the above proposal, Exhibit A shall be deemed governing.
- C. 24 CFR Parts 84, 85, and 570;
- D. 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
- E. City=s Monitoring Policies

3. Reimbursement of Expenses

For implementation of the Project, the City agrees to reimburse the Agency for eligible costs incurred by it in accordance with the Budget in an amount not to exceed _____. 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 the prior written approval of the Manager. Additional budget lines may not be added after the Project has begun operation without prior written approval of the Manager.

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. Requests for reimbursement 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. Requests containing insufficient documentation as determined by the City must be revised within fifteen (15) calendar days of notice by City to the Agency of said insufficiency or Agency forfeits the right to reimbursement of all items appearing in said request. In the event the latest date to request reimbursement falls on a holiday or a weekend, then the Agency shall submit 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 date of this Agreement or its termination. The requirements of this paragraph may be waived by the Manager in writing. The City shall withhold reimbursements of costs if the Agency has not submitted programmatic reports which are approved by the Manager. No final payment shall be made pursuant to this Agreement until such time as the final programmatic report is submitted and approved by the Manager. At the expiration of the term or termination of the Agreement, all remaining funds associated with this Agreement shall be

reprogrammed. All reimbursement payments shall be made out of the 2016 - Federal Program Fund 262 - Community Development - Agency 020 Object 5434 –Project Account No._____.

4. Term

The term of this Agreement shall be deemed to have commenced on April 1, 2016, the date of this Agreement notwithstanding, and shall continue through September 30, 2018, 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 of the term of the Agreement, or its termination, the Agency=s right to seek reimbursement shall cease and no further reimbursements shall be made by City to the Agency under this Agreement. In the event the term of the Agreement or its termination falls on a holiday or a weekend, then the Agency shall submit documentation 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.

5. Programmatic Reports

The Agency shall submit programmatic reports on a quarterly basis in the form as shown in Exhibit D. Quarterly programmatic reports must be submitted whether or not there is Project activity in a given quarter. Programmatic reports and requests for reimbursement shall be submitted to by the Manager on the following dates:

<u>Performance Period</u>	<u>Due Date</u>
June 30, 2016	July 15, 2016
September 30, 2016	October 15, 2016
December 31, 2016	January 15, 2017
March 31, 2017	April 15, 2017
June 30, 2017	July 15, 2017
September 30, 2017	October 15, 2017
December 31, 2017	January 15, 2018
March 30, 2018	April 15, 2018
June 30, 2018	July 15, 2018
September 30, 2018	October 15, 2018

In the event the due date to submit programmatic reports and requests for reimbursement falls on a holiday or a weekend, then the Agency shall submit documentation the following business day. A final programmatic report shall be submitted to the Manager within fifteen (15) days of the last Project activity.

No final payment shall be made pursuant to this Agreement until the final programmatic report is submitted and approved.

6. Records and Inspections

A. Records

1. Establishment, Maintenance and Inspection of Records

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD and/or City 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. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

2. Source Documentation

Any and all documentation relating to eligible costs paid by 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 ensure 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.

3. 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 HUD=s grantee Consolidated Annual Performance and Evaluation Report.

4. Audits and Inspections

The Agency shall ensure that at any time during normal business hours and as often as 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 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 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 Audit

The Agency shall submit to the City an A-133 audit within nine (9) months of the end of its fiscal year if the Agency expends \$750,000 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 \$750,000 from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year, the Agency shall submit to the City a financial statement audit conducted in accordance with all effective auditing standards with the management letter within nine (9) months of the end of its fiscal year.

7. Program Income

Program income as defined in 24 CFR 570.500(a) shall be reported and paid to the City upon its receipt in a form and time frame as determined by the Manager. Notwithstanding the above, program income may be retained when needed for cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section 108 security needs.

Any program income on hand when this Agreement expires, or received after the expiration of this Agreement, shall be promptly paid to the City.

8. Property

The Agency agrees to comply with the provisions of 24 CFR 570.503(b)(8) entitled Reversion of Assets.⁶ The purchase of any real or personal property under this Agreement is subject to the approval of the Manager. Said equipment purchase is subject to purchasing requirements under the applicable federal circular as referred to under Documents to be Incorporated, as well as biannual inventories, which must be performed until such time as Agency disposes of said equipment, which disposal requires prior written consent of the Manager.

9. Equipment Lien (Where applicable)

Immediately upon purchase of equipment utilizing funding under this Agreement (the Equipment), the Agency agrees to execute a UCC Financing Statement (Equipment Lien) covering the Equipment and naming the City as a Secured Party on the Equipment. Upon execution of the Equipment Lien, the Agency agrees to file/record the Equipment Lien in the Office of the Minnesota Secretary of State and/or St. Louis Recorder's Office as appropriate and to pay all costs associated therewith. Upon such filing/recording, the Agency shall immediately submit to the City evidence or confirmation of the same. The equipment lien may be subordinated to other liens upon the prior written approval of the Manager.

10. 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 or might arise on behalf of 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 City, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

11. Special Obligations

The Agency, as owner of a Property where Project activities are to take place (the Property), shall have the obligation to use and operate the Property in conformance with this Agreement. Said obligations shall include, but not be limited to the following: In any materials made public with regard to the activity or the Project, the Agency agrees to include a reference to the assistance provided by City pursuant to this Agreement.

12. 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, for any reason, of the Agency to fulfill 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 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 programmatic reports on the dates set forth herein.
4. Submission by the Agency to the City of reports or requests for payment 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 by HUD of the CDBG grant to the City under which this Agreement is funded.
7. No activity under this Agreement, either programmatically or payments made, for six (6) months after the commencement of this Agreement.
8. Noncompliance with all 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 its activities under this Agreement, including, but not limited to, all applicable regulations of HUD.
9. Payment of fees 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. Enforce the liens imposed by this Agreement upon the Equipment in the full amount of the grant given to Agency under this Agreement.
3. Seek injunctive relief to enforce the terms and conditions of this Agreement.
4. Seek such other relief as may be available to City at law or in equity.

C. Attorneys= Fee

In the event that Agency is in default of the terms and conditions of this Agreement as herein defined, City shall be entitled to reasonable attorneys= fees and costs incurred in enforcing the terms and conditions of this Agreement.

D. Nonwaiver

Any forbearance by the City with respect to any of the terms and conditions of this Agreement in no way constitutes a waiver of City=s rights or privileges granted hereunder.

13. 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.

14. Assignability

The Agency shall not assign any right or interest in this Agreement and shall not transfer any interests in the 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 furnished promptly to the City.

15. Covenant Against Contingent Fees

The Agency warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person any fee commission percentage, brokerage fee, gift or other consideration, contingent upon or resulting from the award or making this Agreement. For breach of this warranty, the City shall have the right to annul this Agreement without liability.

16. 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.

17. 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 the Agency at _____, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

18. Nondiscrimination and Equal Opportunity

The Agency hereby agrees that in the provision of the services described in the Project, it will comply with all nondiscrimination and equal opportunity requirements of 24 CFR Part 5, 24 CFR 576.57, and the Minnesota Human Rights Act.

19. Drug and Alcohol Free Policy

The Agency acknowledges that it is responsible for the development and enforcement of a policy designed to ensure that Agency facilities, with regard to

which CDBG funds are expended, are free from the illegal use, possession or distribution of drugs or alcohol by persons working at or using those facilities.

20. 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.

21. Waiver

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

22. 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.

23. 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 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 the City and the Agency, may be waived at any time by mutual agreement between the City and the Agency.

24. 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.

25. Entire Agreement

This Agreement, including all exhibits and 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.

26. 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.

