

**2019 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
AFFORDABLE HOUSING PROJECT
DULUTH ENERGY EFFICIENCY PROGRAM
ECOLIBRIUM3**

THIS AGREEMENT is entered into this ____ day of _____, by and between the City of Duluth, (“City”), and Ecolibrium3, DUNS No. 78374652, (“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), awarded _____, 2019, with Federal Award Number B-19-MC-27-0002; 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 Duluth Energy Efficiency Program pursuant to Resolution 19-0410 approved June 24, 2019; 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/administer the Duluth Energy Efficiency Program (“Project”) in accordance with the Scope of Services and the Project Budget attached as Exhibit A, and as outlined in the Agency’s funding proposal on file in the City’s Planning and Development Division (“Division”). Funding of the Project as performed by the Agency will be overseen by the Manager of the Planning and Development Division for the City of Duluth (“Manager”). 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 most current income guidelines (“Exhibit B”) when determining whether assistance shall be provided under the terms of this Agreement. Documentation of income shall be the IRS Form 1040 method as prescribed by HUD in 24 CFR 570.609. Agency agrees that CDBG funds shall only be used to provide services to residents of the City of Duluth, Minnesota.

In the event a mortgage lien is executed by a property owner under the Project, upon execution of such mortgage lien, the Agency agrees to immediately record the mortgage lien with a Notice of Foreclosure in the office of the St. Louis County Recorder and pay all costs associated therewith. The Agency shall keep written reports regarding mortgage liens that have been recorded by the Agency pursuant to this Agreement. Subordination of any mortgage lien taken under the Project to a subsequent lien must be approved in writing by the Manager.

The purchase of any real or personal property under this Agreement is subject to the approval of the Manager. Any 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.

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 titled "Duluth Energy Efficiency Program" (Project), received August 24, 2018;
- 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 and Financial Policy

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 one hundred twelve thousand and five hundred dollars (\$112,500). 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 and 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 twice per month 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 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 may forfeit 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 the request and 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 City shall withhold reimbursements of costs if the Agency has not submitted programmatic reports which are approved by the Manager or if the Agency is not in compliance with the terms of any other Community Planning agreement. 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. The requirements of this paragraph may be waived by the Manager in writing.

All reimbursement payments shall be made from 2019 Federal Program Fund 262 - Community Development - Agency 020 – Object 5434 - Project Account No.CD19CD-HOUS-6787.

4. Term

The term of this Agreement shall be deemed to have commenced on April 1, 2019, the date of this Agreement notwithstanding, and shall continue through ~~September 30, 2020~~ **March 31, 2022**, 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 may cease. 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 may be reprogrammed. No activity may begin before the environmental review clearance date.

5. Programmatic Reports

The Agency shall submit statistical and narrative reports on a quarterly basis and at such time as a final request for reimbursement is submitted. All statistical and narrative reports shall be submitted in the form approved by the Manager consistent with Exhibit D to this contract. Quarterly reports must be submitted throughout the term of this Agreement, whether or not activity occurs or funds are disbursed in a given quarter. Programmatic reports and requests for reimbursement shall be submitted to the Manager on the following dates:

<u>Performance Period</u>	<u>Due Date</u>
April 1 – June 30, 2019	July 15, 2019
July 1 – September 30, 2019	October 15, 2019
October 1 – December 31, 2019	January 15, 2020
January 1 – March 31, 2020	April 15, 2020

In the event the due date to submit programmatic reports and reimbursement requests falls on a holiday or a weekend, Agency shall submit reports the following business day. A 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 all final program reports have been submitted and approved. Should an Agency fail to submit final programmatic reports, any 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.

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 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.

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 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, including 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 as required by 24 CFR 570.503(b)(8).

8. Publicity Requirements

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

9. Affirmative Marketing

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. Prior to any funds being reimbursed under this Agreement, the Agency shall submit, and have approved by the Manager, an Affirmative Marketing Plan.

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 from the City. 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. 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 any of its obligations under this Agreement, or any other agreement between the Agency and the City.
2. 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.
3. Failure to submit complete programmatic reports on the dates set forth herein.
4. Submission by the Agency to the City of programmatic reports, audits, 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. Failure to complete all work on the Project as provided for herein.

11. Failure to file Mortgage Liens or Notices of Foreclosure provided for herein.

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.
4. Foreclosure or enforce the lien imposed by this Agreement upon the properties in the full amount of the grant or loan given the property owner through the Agency under this Agreement.

C. Attorneys' Fees

In the event that the Agreement is terminated for cause, 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.

12. 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 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. The Manager hereby consents to the Agency subcontracting with subcontractor(s) selected pursuant to competitive bidding process who are performing the rehabilitation or development 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.

13. Debarment

The Agency shall provide a certification 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.

14. 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.

15. 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.

16. Notices

Notices to the City provided for herein shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to:

A. The City, at:
Planning and Development Manager
Duluth City Hall, Room 160
411 W 1st Street
Duluth, Minnesota 55802

B. The Agency, at:
Ecolibrium3
2014 W Superior St
Duluth, MN 55806

Notices to alternative persons or addresses shall be acceptable in the case that such other respective persons or addresses have been designated by the parties in writing from time to time.

17. Nondiscrimination and Equal Opportunity

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.

18. Drug and Alcohol Free Policy

Agency acknowledges that it is responsible to develop a policy designed to ensure that facilities with regard to which 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.

19. 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.

20. Waiver

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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 shown above.

CITY OF DULUTH

AGENCY

By _____
Mayor

By _____
Its _____

Date _____

Date _____

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 _____, 2019,
by _____, the _____ of the
_____ (Agency), on behalf of the Agency.

Notary Public

Exhibit A Scope of Work, Budget, Goals & Outcomes

Public Service Subaward: Duluth Energy Efficiency Program

Account Number: 19-HS-04

DUNS: 78374652

Federal Grant Number: B-19-MC-27-0002

Federal Award Date:

Scope of Service: The Duluth Energy Efficiency Program will reduce energy poverty of residents and improve the health of Duluth's housing stock by assisting LMI families with energy efficiency improvements, including weatherization and healthy home improvements.

CDBG Contract Goal: 50 housing units

CDBG Budget: \$112,500 in CDBG funds are to be used in the following manner:

<u>Amount</u>	<u>Program Activity Costs</u>
\$82,500	Salaries
\$17,500	Materials
\$12,500	Overhead
\$112,500	Total CDBG funds

Income Verification: Agency shall use the Adjusted gross income as defined under IRS Form 1040 for verification of clients' income for the purpose of documentation of low-to-moderate income persons served.

Environmental Clearance Date: 7/23/19

Procurement and Prevailing Wage: The agency will work with the City of Duluth to ensure all federal procurement and prevailing wage requirements are met prior to the commencement of the project.

Exhibit B HUD 2019 Income Guidelines



PLANNING & ECONOMIC DEVELOPMENT

Community Planning Division
 City Hall – 411 W 1st Street – Room 110
 Duluth, Minnesota 55802
 218-730-5580 / planning@duluthmn.gov

DATE: June 12, 2019

TO: All Agencies and Individuals participating in the City of Duluth HUD Community Development Block Grant (CDBG) funded projects and HOME Investment Partnership (HOME) funded homeownership projects.

FROM: Ben VanTassel, Manager

RE: **2019 CITY OF DULUTH HUD INCOME GUIDELINES**

ANNUAL INCOME

FAMILY SIZE	EXTREMELY LOW- INCOME <i>(60% of the Sect 8 very low income)</i>	VERY LOW-INCOME <i>(50% of the Median)</i>	LOW INCOME <i>(80% of the Median)</i>
1	\$15,200	\$25,350	\$40,550
2	\$17,400	\$29,000	\$46,350
3	\$21,330	\$32,600	\$52,150
4	\$25,750	\$36,200	\$57,900
5	\$30,170	\$39,100	\$62,550
6	\$34,590	\$42,000	\$67,200
7	\$39,010	\$44,900	\$71,800
8	\$43,430	\$47,800	\$76,450

Discontinue previous income guidelines and use the above guidelines until such time as they are revised again by HUD.

Effective – June 28, 2019

Exhibit C Form of Request – Reimbursements

Agency Letterhead

Date

Ben VanTassel
 Planning and Development Division
 City Hall Room 160
 411 W 1st St.
 Duluth, MN 55802

Program: 2019 (CDBG/HOME/ESG)
 Project Name:

Contract #:
 Contract Term:
 CD Project #:
 Agency Invoice #

This is a request for reimbursement of costs totaling \$_____ for the period of *Month Day, Year to Month Day, Year.*

	Budget	Previous Requests	Current Request	Requests to Date	Balance
Contract line item 1					
Contract line item 2					
TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -

Total Requested:	\$ -
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I certify that these costs have been incurred. Backup and documentation are enclosed.

Sincerely,

Name
 Title

Exhibit D Performance Report

CDBG Housing Demographic Reporting Form		
Subrecipient Name:	_____	CDBG Project #: _____
Contact Person:	_____	Contract #: _____
Email:	_____	IDIS #: _____
Contract Amount:	_____	
Goal:	_____	
Contract Year:	Fiscal Year 2018 (4/1/18 - 3/31/19)	
	Persons Served	Hispanic Ethnicity*
1. Total Number of Persons Served		
Persons Served by Race	0	0
2. White		
3. Black/African American		
4. Asian		
5. American Indian/Alaska Native		
6. Native Hawaiian/Pacific Islander		
7. American Indian/Alaska Native & White		
8. Asian & White		
9. Black/African American & White		
10. American Indian/Alaska Native & Black		
11. Other Multi-Racial (not identified above)		
Persons Served by Income	0	
12. Very Low Income (0% to 30%)		
13. Low Income (31% to 50%)		
14. Low-Moderate Income (51% to 80%)		
15. Non Low-Moderate Income (over 80%)		
16. Number of reasonable accommodation requests		
2018 Leveraged Funds (Other Sources) <i>(Identify leverage funding sources below)</i>	Leverage \$ Amount:	
Other Federal		
State/Local		
Private		
Other:		
Other:		
Total	\$0	
ACCOMPLISHMENTS NARRATIVE:		