

**DEVELOPMENT AGREEMENT**

**between**

**CITY OF DULUTH**

**and**

**ORGANIZATION**

**for**

**Address**\_\_\_\_\_

**PIN #** \_\_\_\_\_

**2022 HOME FUNDING - NEW CONSTRUCTION**

## **DEVELOPMENT AGREEMENT**

THIS AGREEMENT, effective as of the date of attestation hereof by the Mayor of the City of Duluth, by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("City"), and \_\_\_\_\_, a 501(c)3 not for-profit corporation created and existing under the laws of the State of Minnesota ("Developer").

### **RECITALS**

WHEREAS, Developer is the owner of property located at \_\_\_\_\_, in Duluth, Minnesota, legally described on the attached Exhibit A (the "Property"); and

WHEREAS, Developer has been awarded Fiscal Year 2022 funding by the City through the US Department of Housing and Urban Development ("HUD") HOME FUND; and

WHEREAS, pursuant to City Council resolution \_\_\_\_\_ the City committed such HOME Funding in an amount of up to \$\_\_\_\_\_ to Developer for the construction of \_\_\_\_\_ new housing units in the City, and required individual development agreements for each new house; and

WHEREAS, Developer has been certified as of effective date of this agreement as a Community Housing Development Organization (a "CHDO") by the City for FY 2022 program activities by the Developer, and the Manager of Planning & Development (the "Manager") has re-evaluated the CHDO certification and hereby recertifies the Developer; and

WHEREAS, Developer desires to rehabilitate the property and principle dwelling unit on the site, enroll the property and dwelling unit in Developer's \_\_\_\_\_ program, and sell the dwelling unit to an eligible homebuyer (the "Project"); and

WHEREAS, Developer has submitted to the City a Scope of Work attached hereto as Exhibit B for the Project, and requesting allocation of an amount of \$\_\_\_\_\_ in HOME Funding for construction of the property (the "HOME Funding"); and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

### **AGREEMENT**

1. **Developer's Duty and Compliance.**

- A. The Project must be in compliance with all applicable ordinances, rules, regulations, and laws of the City, State of Minnesota, and HUD.
- B. The Project must adhere to all City HOME policies and procedures effective as of the date of this contract.
- C. Developer shall be responsible for obtaining all relevant governmental approvals, including environmental clearance by the Director or designee, and all required building permits.

2. **Required Improvements.** Developer hereby agrees to complete the following improvements to the Property:

- A. Developer agrees to design and construct improvements to the property consistent with the work described in Exhibit B.
- B. Property shall be certified as compliant with all lead safety requirements and recommendations developed by HUD for rehabilitation.

3. Financing. Developer assumes all risks and agrees to bear all costs and fees related to the construction and site work of the Project.
4. Program Adopted. The HOME Program provisions contained in 24 CFR Part 92 (the “Program”) are hereby adopted by reference and deemed to be part of this Agreement. All activities carried on by the Developer pursuant to this Agreement shall be deemed to be governed by the Program.
5. HOME Budget. The parties agree that the HOME funds granted to the City under this Agreement shall be used strictly in compliance with the Scope of Work and budget shown in Exhibit B. 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. All costs under this agreement must be in conformance with applicable provisions of 24 CFR Part 200.
6. Religious Activities. The Developer shall not require tenants to participate in inherently religious activities such as worship, religious instruction, or proselytizing. If Developer is a faith-based organization, Developer may carry out its mission related to religious beliefs, provided that HOME funds do not financially support inherently religious activities. It is acceptable for Developer’s Board of Directors to be selected based on religious practice, as well as religious references in mission statements and other governing documents. Developer 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 for HOME assisted housing must not rely on the applicant’s participation in religious activities or programs.
7. HOME Income Limits. Developer will determine that homeowners assisted with HOME funds have an annual income at or below 80% of Duluth area median income. Annual household income will be determined utilizing the adjusted gross

income as defined for purposes of reporting under Internal Revenue Service 1040 series for individual Federal annual income tax purposes.

8. Affirmative Marketing. Developer 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 Developer shall submit, and have approved by the Manager, an Affirmative Marketing Plan. The City reserves the right to annually review Developer's records documenting affirmative marketing actions, and Developer agrees to take any corrective actions City may require when affirmative marketing requirements are not met.
9. Repayment of HOME Funds. Program income as defined in 24 CFR 570.500(a) and any repayment or recapture of HOME funds shall be reported and remitted to City upon its receipt in a form and time frame as determined by the City. Any program income, repaid or recaptured HOME funds on hand when this Agreement expires, or received after the expiration of this Agreement, shall be remitted to City.
10. Fees. Developer is prohibited from charging servicing, origination, or other fees for the costs of administering the HOME funded program(s) except as permitted by CFR 24 92.214(b)(1).
11. Reimbursement of Project Costs. City agrees that it will reimburse the Developer 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 Agreement herein. The Developer 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 Developer may apply to the City for such reimbursement not more frequently than monthly for expenses incurred in implementing Project, and only for amounts over One Hundred Dollars (\$100.00). The Developer's draw

requests shall be accompanied by such documentation as City 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 property are due and payable. Once the City determines that the draw request is payable and in conformance with the terms and conditions of this Agreement, City shall promptly pay the certified amount. City 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 City prior to January 15 of the following year. In the event that January 15 falls on a holiday or a weekend, the Developer 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 from 2022 HOME Program Fund 260, Agency 020, Object 5434, Project CD22HM, Activity CH22-\_\_\_\_\_.

12. Other Project Requirements. The Developer shall comply with all applicable federal and state laws and regulations as described in 24 CFR Part 92, subpart H inclusive.
13. Reports and Records. The Developer shall be responsible for furnishing to HUD or the City such statements, records, data and information as HUD or the City 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 Developer agrees that it shall prepare and forward to the City such information as is required in order for the City to meet the requirements of HUD's grantee Consolidated Annual Performance and Evaluation Report. The Developer shall promptly furnish to the City any and all financial statements; financial reports; and audits prepared by or on behalf of the Developer 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 Developer.

The Developer shall submit to the City an A-133 audit within nine (9) months of the end of its fiscal year if the Developer expends \$750,000 or more from all federal funding sources, including monies expended under this Agreement, during the Developer's fiscal year. If the Developer expends less than \$750,000 from all federal funding sources during the Developer's fiscal year, the Developer shall submit to the City a 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 Developer in accordance with requirements prescribed by HUD or the City with respect to all matters covered by this Agreement. Except as otherwise authorized by HUD, such records shall be maintained by the Developer 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 Developer 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 Developer.

The Developer 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. The Developer 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.

14. Homebuyer Assistance Agreement. Developer agrees to collaborate with the City to enter complete the “Homebuyer Assistance Agreement between the City and the Participant” prior to sale of the rehabilitated house, as described in City’s HOME Policies & Procedures. Developer shall ensure all required Mortgage Liens and Notice of Foreclosure documentation in favor of City is filed at time of closing, and recorded copies to be provided to City, to ensure compliance with all resale requirements of the City’s HOME Policies and Procedures.

15. Enforcement Provisions. In order to ensure compliance with the terms and conditions of this Agreement, the Developer agrees that City and its agents and staff shall have the right to have access to the Project units and to inspect them at reasonable times and with reasonable notice to the Developer.

The PJ may terminate this Agreement without cause upon thirty (30) days’ written notice to the Developer. The City may terminate this Agreement for cause upon written notice to the Developer specifying the cause for termination, any period for cure by the Developer, and the date of termination. 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 Developer and the City, until there is a cure by the Developer, 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 City. 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.

Further, the Developer 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 Developer, and



the City may withhold any reimbursement to the Developer on this and other agreements between the Developer and the City of Duluth for the purpose of set-off until such time as the exact amount of damages due the City from the Developer can be determined. For the purposes of this Agreement, cause may include any of the following:

- A. Failure, for any reason, of the Developer to fulfill any of the terms or obligations under this Agreement, or any other agreement between the Developer and the City or City of Duluth, in a timely and proper manner.
- B. The making of any arrangement with or for the benefit of Developer's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Developer that it is bankrupt; or filing by the Developer of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Developer unless dismissed within forty-five (45) days.
- C. Submission by the Developer to the City 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 HUD or by the Congress of the United States of the grant to the City 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 record a mortgage lien or restrictive covenant.
  - I. Beginning rehab activities prior to the environmental clearance date.
  - J. Beginning rehab activities prior to City approval to proceed following subsidy layering review (if applicable).
  - K. Beginning rehab activities prior to an inspection of the housing structure for compliance with housing codes and lead-based paint hazards (if applicable).
  - L. 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:
    - i. Demand immediate and full repayment of the amount granted to Developer pursuant to this Agreement.
    - ii. Seek injunctive relief to enforce the terms and conditions of this Agreement.
    - iii. Seek such other relief as may be available to City at law or in equity.
16. Anti-Lobbying. Developer 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 Developer, 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 Developer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

17. Assignability. The Developer 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 Developer 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 Developer subcontracting with subcontractor(s) selected pursuant to competitive bidding process, in accordance with adopted City HOME Program Policies and Procedures, who are performing the rehabilitation work. Consent by the Manager to subcontract, assign or otherwise dispose of any portion of this Agreement shall not relieve the Developer of any of the responsibility for fulfillment of this Agreement.
18. Publicity Requirements. In any materials made public with regard to the activity or the Project referred to above, the Developer agrees to include a reference to the assistance provided pursuant to this Agreement by City and HUD.

19. Matching Contribution. At City's request, the Developer shall be responsible for requiring that a Matching Contribution be available or in place with regard to such HOME funds which, when taken together with the aggregate of HOME grants previously extended under the HOME Program, meet the requirements for Matching Contributions as set forth in the HOME Program statutes and regulations promulgated thereunder.

21. Environmental Review. City is the responsible entity regarding environmental review utilizing a tiered evaluation process for environmental assessment of housing activities. Developer will assist the City with this responsibility by documenting detailed site and housing structure specific information related to flood plain zone location and historic preservation in accordance with City's programmatic agreement, and wetland delineation. If a project is located in a flood plain or wetland, or requires State Historic Preservation Office review under the programmatic agreement, Developer will submit detailed site and housing structure information and proposed rehab activities to City. Rehab activities involving physical intervention on a housing structure are prohibited prior to City's determination of compliance with environmental review requirements.

22. Inspections. All Required Improvements shall be made in accordance with City construction design standards and specifications and shall be subject to the inspection by and approval of the City. Following reasonable notice, Developer hereby grants City, its agents, employees and contractors a license to enter the Property and perform all inspections deemed appropriate by the City in connection with this Agreement.

23. Developer's Default. In the event Developer fails to comply with or perform any terms, conditions, undertakings, or obligations under this Agreement, City may, in addition to and not in lieu of any other remedies or rights available to it by law or equity:

- A. Institute an action to specifically enforce performance of any term of this Agreement. Developer acknowledges that the rights of City to performance of the obligations of Developer pursuant to this Agreement are special and

unique, and that, in the event Developer violates, fails or refuses to perform any condition, agreement or provision herein, City may be without an adequate remedy at law.

B. Refuse to issue building permits for construction on the Property.

No remedy conferred in this Development Agreement is intended to be exclusive. The election of any one or more remedies shall not constitute a waiver of any other remedy. City may, but is not obligated to, exercise any of the remedies referred to in this paragraph.

24. Insurance. Developer agrees to purchase and maintain, during the term of this Agreement, insurance in the form of Workers Compensation and Employers Liability, Commercial General Liability and Automobile Liability covering operations associated with the Required Improvements and the Project, and Property insurance covering real and personal property interests at or near the Property, with the following limits:

Workers' Compensation	Statutory (MN)
Employers' Liability	\$1,000,000
Auto Liability (owned, hired and non-owned)	\$1,000,000
Commercial General Liability (including Contractual Liability)	
Each Occurrence	\$2,000,000
Aggregate	\$4,000,000
Property Insurance	To Replacement Value
Umbrella or Excess Liability	\$10,000,000
Professional Liability	\$1,000,000
Environmental Liability	\$1,000,000

Prior to commencement of construction, Developer agrees to deliver to the City a Certificate of Insurance, naming the City as an Additional Insured, as evidence that the above coverages are in full force and effect.

25. General Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or Developer, by reason of death of or injury to person or persons or the loss of or damage to property arising out of Developer's performance of its obligations under this Agreement. On ten (10) days written notice from City, Developer will appear and defend all lawsuits against City relating to or arising from such injuries or damage.

26. Environmental Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any liability, loss, damage, fine, judgment, penalty, fee, cost, interest, or expense arising out of any condition existing on the Property prior to commencement of construction of the Required Improvements or the Project relating in any way to the environment, preservation or reclamation of natural resources, the presence, management, release or threatened release of any Hazardous Material (any and all explosive or radioactive substances or wastes and hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any environmental law) or to health and safety matters.

27. Notices. Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City:                      City of Duluth  
Attn: Director of Planning and Economic Development  
160 City Hall  
411 West First Street  
Duluth, MN 55802

In the case of Developer:

28. Binding Effect. This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

29. Term. The term of this Agreement shall commence on April 1, 2022, the date of the signatures to this Agreement notwithstanding, shall continue through September 30, 2023, unless terminated earlier as provided for herein. Notwithstanding the above, the time for completing the Project and incurring eligible costs may be extended for a period of time not to exceed twelve (12) months upon the prior written approval of the Planning and Development Manager (the “Manager”).

At Developer’s request, City will issue a written certificate of completion in recordable form acknowledging that the Required Improvements have been completed. Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

30. Assignment. Developer may not assign this Agreement without the written approval of the City.

31. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota and of the United States of America, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts sitting in St. Louis County, Minnesota, and waive any objections to such location based on jurisdiction, venue or inconvenient forum.

32. Construction of Agreement. Developer and City have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties

and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

33. Severability. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

34. Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

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. 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.

37. Authorization to Execute Agreement. The Developer 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 Developer 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 Developer in accordance with the terms and conditions thereof.

38. Applicable Laws. This Agreement, together with all of its terms, covenants and conditions, is made in the State of Minnesota and shall be interpreted in accordance with the laws of the State of Minnesota.



39. HUD Funding Contingency. The parties hereto acknowledge that reimbursements to Developer under this Agreement are being provided in full or in part through HOME funding provided through HUD pursuant to an appropriation from the Congress of the United States (Congress). In the event that Congress or HUD reduce or eliminate the funding for the HOME Program in any way whatsoever, or by action or inaction otherwise reduce, impair or eliminate City's ability to perform its obligations under this Agreement, City shall have the right, in the exercise of its sole and unfettered discretion, to reduce or eliminate the funding available to Developer under this Agreement or to terminate or otherwise modify this Agreement in such a manner as, in the judgment of City, best serves its interest with regard to carrying out or not carrying out any of the activities contemplated in the approved Consolidated Plan for the City of Duluth.

40. 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.

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

CITY OF DULUTH, a Minnesota  
Municipal Corporation

By \_\_\_\_\_

Date \_\_\_\_\_

Its Mayor

By \_\_\_\_\_

Date \_\_\_\_\_

Its Executive Director

Attest:

By \_\_\_\_\_

Its City Clerk

Date \_\_\_\_\_

Countersigned:

\_\_\_\_\_

Its Auditor

Approved:

\_\_\_\_\_

Its City Attorney

EXHIBIT A

**Legal Description of the Land**

## EXHIBIT B

### **Scope of Work**

