

COUNTY OF ST. LOUIS
ARPA Grant Agreement 5771V

This ARPA Grant Agreement (the “Agreement”) is entered by and between the **County of St. Louis**, a body corporate and politic existing under the laws of the state of Minnesota (the “County”), and **the City of Duluth** (“Duluth”), a municipality existing under the laws of the state of Minnesota, with offices located at **City Hall, Room 20, 411 West 1st Street, Duluth, Minnesota 55802**.

WHEREAS, the American Rescue Plan Act of 2021 (“ARPA”), Pub. L. No. 117-2, 135 Stat. 4 (2021), was enacted in March 2021; and

WHEREAS, the portion of section 9901 of ARPA that is codified at 42 U.S.C. § 803 established the Coronavirus Local Fiscal Recovery Fund (the “CLFRF”); and

WHEREAS, the final rule concerning the CLFRF (the “Final Rule”), 31 C.F.R. pt. 35, was adopted by the Secretary of the U.S. Department of the Treasury (“Treasury”) in January 2022; and

WHEREAS, the County received an award of funds from the CLFRF under 42 U.S.C. § 803(b)(3); and

WHEREAS, the County wishes to make, and Duluth wishes to receive, a grant of funds from the CLFRF in the amount of \$250,000.00; and

WHEREAS, the use of funds from the CLFRF is limited to certain eligible uses as provided in 42 U.S.C. § 803(c) and 31 C.F.R. §§ 35.6–.8; and

WHEREAS, the funds granted to Duluth shall be used for the purpose of the construction project more fully described in the grant application attached hereto as Exhibit A and incorporated by reference and for no other purpose; and

WHEREAS, this use is an eligible use of funds under 42 U.S.C. § 803(c)(1)(C) and 31 C.F.R. § 35.6(d); and

WHEREAS, on May 3, 2022, the County Board of Commissioners adopted Resolution No. 22-264 approving the grant.

NOW, THEREFORE, the County and Duluth agree as follows:

INCORPORATION OF RECITALS

1. The foregoing recitals are incorporated herein by reference and made part of this Agreement.

DULUTH’S RESPONSIBILITIES

2. Duluth shall use the grant funds provided under this Agreement for the construction project more fully described in Exhibit A and for no other purpose.
3. Duluth shall either submit to the County’s Deputy Administrator biannual reports as set forth on the third page of Exhibit A or require the GND Development Alliance to do so.

4. Duluth shall comply with ARPA, the Final Rule, any interpretive guidance issued by Treasury with respect to ARPA or the Final Rule, and any other applicable law relating to this Agreement, and shall require the GND Development Alliance to do so as well. Duluth shall promptly comply with any reasonable request made by the County for the purpose of monitoring or ensuring compliance with this Agreement or any applicable law relating to this Agreement, and shall require the GND Development Alliance to do so as well.
5. Duluth shall deliver to the County's Deputy Administrator invoices with respect to costs incurred for the construction project more fully described in Exhibit A. To the extent Duluth received the invoices prior to its execution of this Agreement, it shall deliver the documents within fourteen (14) days after the County and Duluth execute this Agreement. To the extent Duluth receives the invoices after its execution of this Agreement, it shall deliver the invoices within fourteen (14) days after it receives the invoices.
6. Duluth's books, records, documents, papers, accounting procedures and practices, and other evidence relevant to this Agreement are subject to examination, duplication, transcription, and audit by the County and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Duluth agrees to maintain such evidence for a period of six (6) years from the termination of this Agreement or longer if any audit in progress requires a longer retention period.

COUNTY RESPONSIBILITIES

7. The County shall pay Duluth Two Hundred Fifty Thousand Dollars and no cents (\$250,000.00) in accordance with the terms and conditions in this section. The County's duty to pay will arise only to the extent that Duluth has delivered invoices in accordance with section 5 of this Agreement, and any payment by the County will be limited to the amounts shown on such invoices. The County will make its payment(s) in accordance with Minn. Stat. § 471.425.
8. The County shall be available for meetings and consultations related to this Agreement.

COMPLIANCE WITH LAWS

9. Duluth agrees to comply with all federal, state, and local laws, ordinances, rules, regulations, and executive orders pertaining to unlawful discrimination on account of race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, disability, or age. Duluth further agrees to comply with all federal, state, and local laws or ordinances and all applicable rules, regulations, and standards established by any governmental agency having jurisdiction over Duluth's performance of its obligations set forth in this Agreement.

INDEMNIFICATION

10. To the fullest extent permitted by law, Duluth shall indemnify and hold harmless the County and its officers, employees, and agents from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from Duluth's performance of its obligations set forth in this Agreement, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of Duluth, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Agreement.
11. To the fullest extent permitted by law, Duluth shall indemnify the County for all losses that (a) are incurred by the County, (b) arise from the acts or omissions of Duluth in connection with this Agreement, and (c) result from the recoupment of any funds by Treasury under 42 U.S.C. § 803(e) and 31 C.F.R. § 35.10.

AMENDMENT

12. Any amendment, variation, modification, or waiver of the provisions of this Agreement shall be valid only when they have been reduced to writing and signed by the authorized representatives of the County and Duluth. This Agreement shall supersede all other oral and written agreements prior to execution of this document.

DEFAULT/TERMINATION

13. If Duluth fails to perform any of the provisions of this Agreement, such failure shall constitute a default. Unless Duluth's default is excused by the County, the County may, upon written notice, immediately terminate this Agreement in its entirety. The County may, but is not required to, allow Duluth to cure the default upon such terms and within such timeframe that the County may require in its sole discretion. If Duluth fails to cure its default in accordance with the terms or within the timeframe required by the County, this Agreement shall automatically terminate.

NOTICES/COMMUNICATION

14. All notices and demands pursuant to this Agreement shall be directed in writing to:

City of Duluth

Jen Carlson
Finance Director
414 W 1st Street City Hall, Room 20
Duluth, MN 55802
218-730-5350
Jcarlson0@duluthmn.gov

St. Louis County

Brian Fritsinger
Deputy Administrator
100 N 5th Avenue W, Room 202
Duluth, MN 55802
218-726-2488
FritsingerB@stlouiscountymn.gov

MINNESOTA LAW TO GOVERN

15. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in the State of Minnesota District Court for the Sixth Judicial District in Duluth, Minnesota.

WAIVER

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

SEVERABILITY

17. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid, or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.

DEBARMENT

18. By entering into this Agreement, Duluth certifies that the firm, association, corporation, or any person in a controlling capacity is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any government agency; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against any person, firm, association, or corporation by a court of competent jurisdiction on any manner involving fraud or official misconduct within the past three years.

ENTIRE AGREEMENT

19. This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings, or contracts. There are no representations, warranties, or stipulations either oral or written not herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates stated below.

City of Duluth

By: _____
Print or Type Name

Signature

Title: _____

Date: _____

Email: _____

County of St. Louis

By: _____
Brian Fritsinger
Deputy Administrator

Date: _____

By: _____
Paul McDonald
Chair, County Board

Date: _____

By: _____
Nancy Nilsen
Auditor

Date: _____

APPROVED AS TO FORM & EXECUTION:

By: _____
Nick Campanario
Assistant County Attorney

Date: _____

Contract Number: **2022-0367**