

**AGREEMENT
BY AND BETWEEN**

**DULUTH 1200 FUND, INC.
AND
DULUTH ECONOMIC DEVELOPMENT AUTHORITY**

THIS AGREEMENT made this _____ day of _____, 2023 by and between the **Duluth Economic Development Authority**, an economic development authority established by Minnesota Statutes § 469.091, (“DEDA”) and the **Duluth 1200 Fund, Inc.**, a private, non-profit corporation under the laws of the State of Minnesota (“1200 Fund”).

WHEREAS, DEDA works closely with economic development partners to stimulate business investment, expand economic prosperity, grow the local tax base and strengthen public-private partnerships within the City of Duluth; and

WHEREAS, DEDA is supportive of the 1200 Fund’s work to incentive loans for business expansions and relocations within the City of Duluth to support the creation of new jobs and community enhancement; and

WHEREAS, the 1200 Fund has been approached by the owners of the Alhambra Theater (“Alhambra Theater”) in West Duluth for assistance in renovating and equipping the Alhambra Theater to provide the opportunity for expansion of the art and entertainment industry in West Duluth (“Alhambra Project”); and

WHEREAS, the 1200 Fund’s Bylaws do not permit it to utilize its funds to the extent desired and requested by the owners and developers of the Alhambra Project; and

WHEREAS, the 1200 Fund is empowered to work collaboratively with DEDA to accomplish the funding needed for the Alhambra Project in accordance with the outline attached hereto as Exhibit A (“Funding Outline”); and

WHEREAS, DEDA’s Board of Directors has approved a grant to the 1200 Fund in the amount of One Hundred Fifty Thousand and No/100 Dollars to the 1200 Fund to support the Alhambra Theater Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

1. **Grant to 1200 Fund.** DEDA hereby agrees to provide funding to 1200 Fund in the amount of up to One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) (“Grant”), payable from _____.
2. **Use of Grant Fund.** The 1200 Fund shall utilize the Grant Funds to provide a grant to the Alhambra Theater Project in accordance with the Funding Outline.

3. **Reporting.** 1200 Fund will provide regular reports to the DEDA which will include a description of activities of the 1200 Fund funded by the Grant.

4. **General Terms and Conditions.**

4.1. **Amendments.** Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the DEDA and 1200 Fund only upon being reduced to writing and signed by a duly authorized representative of each party.

4.2. **Assignment.** 1200 Fund agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the DEDA.

5. **Data and Confidentiality, Records and Inspection.**

5.1. 1200 Fund must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by DEDA under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by 1200 Fund under this Agreement. 1200 Fund agrees to hold DEDA, its officers, and employees harmless from any claims resulting from 1200 Fund's failure to comply with this law. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by 1200 Fund. If 1200 Fund receives a request to release the data referred to in this clause, 1200 Fund must immediately notify DEDA and consult with DEDA as to how 1200 Fund should respond to the request. 1200 Fund's response to the request must comply with applicable law.

5.2. Records shall be maintained by 1200 Fund in accordance with requirements prescribed by the DEDA and Generally Accepted Accounting Principles ("GAAP") and 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.

5.3. 1200 Fund will ensure that all costs shall be supported by properly executed invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

5.4. 1200 Fund shall be responsible for furnishing to the DEDA records, data and information as the DEDA may require pertaining to matters covered by this Agreement.

5.5. 1200 Fund shall ensure that at any time during normal business hours and as often as the DEDA may deem necessary, there shall be made available to the DEDA for examination, all of its records with respect to all matters covered by this Agreement. 1200 Fund will also permit the DEDA 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.

6. **1200 Fund Representation and Warranties.** 1200 Fund represents and warrants that:

6.1. 1200 Fund shall provide matching funds of no less than \$50,000 to this program.

6.2. 1200 Fund shall perform its duties in a professional and diligent manner in the best interests of the DEDA and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.

6.3. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the 1200 Fund is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the 1200 Fund contrary to the terms of any instrument or agreement.

6.4. There is no litigation pending or to the best of the 1200 Fund's knowledge threatened against the 1200 Fund affecting its ability to carry out the terms of this Agreement or its ability to carry out the terms and conditions of any other matter materially affecting the ability of the 1200 Fund to perform its obligations hereunder.

6.5. The 1200 Fund will not, without the prior written consent of the DEDA, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

7. **Agreement Period.** The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of termination by either party upon thirty (30) days written notice to the other party or the date six (6) months after the final disbursement of Grant funds.

8. **Independent Contractor.**

8.1. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting 1200 Fund as an agent, representative or employee of the DEDA or City of Duluth for any purpose or in any manner whatsoever. The parties do not intend to create any third-party beneficiary of this Agreement. 1200 Fund and its employees shall not be considered employees of the DEDA or the City of Duluth, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of 1200 Fund's employees while so engaged, and any and all claims whatsoever on behalf of 1200 Fund's employees arising out of employment shall in no way be the responsibility of DEDA or the City of Duluth. 1200 Fund's employees shall not be entitled

to any compensation or rights or benefits of any kind whatsoever from DEDA or the City of Duluth, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, DEDA and the City of Duluth shall in no way be responsible to defend, indemnify or save harmless 1200 Fund from liability or judgments arising out of intentional or negligent acts or omissions of 1200 Fund or its employees while performing the work specified by this Agreement.

8.2. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

9. **Indemnity.** To the extent allowed by law, 1200 Fund shall defend, indemnify and hold the DEDA and the City of Duluth their employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the 1200 Fund's a) breach of this Agreement or b) its negligence or misconduct or that of its agents or contractors in performing the services hereunder or c) any claims arising in connection with 1200 Fund's employees or contractors, or d) the use of any materials supplied by the 1200 Fund to the DEDA or the City of Duluth unless such material was modified by DEDA or the City of Duluth and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

10. **Insurance.**

10.1. 1200 Fund shall obtain and maintain for the term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

10.2. A Fiduciary Policy, Crime Policy covering employee theft, and Contractual Liability Policy with limits not less than One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) Single Limit, shall be in a company approved by the DEDA. The DEDA shall be named as an Additional Insured by endorsement under each policy. Upon execution of this Agreement, 1200 Fund shall provide Certificate of Insurance evidencing such coverage with thirty (30) days' notice of cancellation, non-renewal or material change provisions included.

10.3. 1200 Fund shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.

10.4. A certificate showing continued maintenance of such insurance shall be on file with the DEDA during the term of this Agreement.

10.5. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the 1200 Fund's interests and liabilities.

11. Defaults and Remedies.

11.1. General Events of Default. The following shall be deemed to be general events of default by 1200 Fund under the terms and conditions of this Agreement to which the remedies set forth in Section 11.1.2 below shall be applicable except as otherwise set forth in this Agreement.

11.1.1. 1200 Fund shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of 1200 Fund pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to 1200 Fund of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

11.1.2. 1200 Fund makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to 1200 Fund or its business; or 1200 Fund files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or 1200 Fund files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of 1200 Fund's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of 1200 Fund of any trustee, receiver or liquidator of any material part of 1200 Fund's properties.

11.2. General Remedies.

11.2.1. Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by 1200 Fund:

11.2.2. Seek and be entitled to monetary damages from 1200 Fund for any damages incurred by DEDA as a result of 1200 Fund's default.

11.2.3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent 1200 Fund's violation of the terms and conditions of this Agreement or to compel 1200 Fund's performance of its obligations hereunder.

11.2.4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

12. **Notices.** Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

If to DEDA: Duluth Economic Development Authority
411 W First Street
Duluth MN 55802
Attn: Director of Planning and Economic Development

If to 1200 Fund: Duluth 1200 Fund, Inc.
411 W First Street
City Hall Room 418
Duluth MN 55802

13. **Civil Rights Assurances.** 1200 Fund, as part of the consideration under this Agreement, does hereby covenant and agree that:

13.1. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.

13.2. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

14. **Laws, Rules and Regulations.** 1200 Fund agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the Duluth Economic Development Authority with respect to their respective agencies which are applicable to its activities under this Agreement.

15. **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. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

16. **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.

17. **Entire Agreement.** It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof.

18. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

Duluth Economic Development Authority

Duluth 1200 Fund, Inc.

By _____
Its President

By _____
Its President

And By _____
Its Secretary