

**DEVELOPMENT AGREEMENT
CITY OF DULUTH
ONE ROOF COMMUNITY HOUSING
JAY STREET DEVELOPMENT**

THIS AGREEMENT entered into this _____ day of _____, 2015, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "City", and ONE ROOF COMMUNITY HOUSING, a nonprofit corporation under the laws of the State of Minnesota, hereinafter referred to as "Developer."

WHEREAS, City is the owner of the hereinafter-described property which it wishes to have redeveloped for residential purposes including but not limited to some moderate income family housing but which, because of prior use, is in need of some environmental remediation and has been enrolled in the MPCA's Voluntary Investigation and Cleanup Program; and

WHEREAS, City has received funding from the Development of Employment and Economic Development ("DEED") to pay for 75% of the remediation and the City is willing to fund the additional 25% in conjunction with acceptable residential redevelopment; and

WHEREAS, Developer is desirous of acquiring and remediating said property and is willing to commit to redevelop it in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, City is desirous of fostering the redevelopment of said property and finds that the conveyance of said property to Developer is in the best interests of the City and its people and that the transaction furthers City's general plan for development.

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

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. City shall mean the City of Duluth, Minnesota.
- B. Developer shall mean One Roof Community Housing.
- C. Director shall mean City's Director of Planning and Construction Services or the person designated to act on behalf of him/her with regard to this Agreement.
- D. Environmental Project shall mean the environmental remediation of the Property to unrestricted residential standards in accordance with a Response Action Plan approved by the Minnesota State Pollution Control Agency and the subrecipient agreement attached hereto as Exhibit A (the "Subrecipient Agreement") and the grant agreement attached as an exhibit to the Subrecipient Agreement.
- E. Housing Project: shall mean the Moderate Income Housing Project and the W & L Housing Project in combination. All housing units constructed pursuant to this agreement shall conform to the standards set forth on Developer's Proposal attached hereto and made a part hereof as Exhibit B.
- F. Moderate Income Housing Project: shall mean the design and construction of at least three (3) units of housing on three (3) platted building lots on the Property at a location to be determined with the prior written approval of the Director which housing meets or exceeds the standards set forth in this Agreement, each of which, together with the lots upon which they are located, shall be available for sale to the public a total price of not to exceed \$226,881 each.
- G. MPCA: shall mean the Minnesota Pollution Control Agency.
- H. Project: shall mean the Environmental Project; the replatting of the Property and the construction of the Housing Project thereon.
- I. Property: shall mean that property located in St. Louis County, Minnesota, described as follows:

Lots 1 through 16 inclusive, Block 104, LONDON DIVISION.
- J. W & L Housing Project: shall mean the design and construction of up to five (5) units of housing on the remaining five (5) platted building lots on

the Property meeting or exceeding the standards set forth in this Agreement available for sale to the public.

ARTICLE II

Pre-development Work

- A. Environmental Project Upon execution of this Agreement, the Developer agrees enter into a subrecipient agreement in the form of that attached hereto as Exhibit A and to hire a City-approved professional environmental firm to design and implement the Environmental Project, subject to the availability of grants from DEED to fund 75% of the costs thereof. The remaining 25% shall be funded by the City in accordance with the Subrecipient Agreement. The Environmental Project shall be completed consistent with the terms of the Subrecipient Agreement. Upon completion of the Environmental Project, Developer shall use its utmost efforts to obtain a petroleum leak site file closure and a No Further Action Letter issued by the MPCA acceptable to the City and for the benefit of the City. If Developer shall fail to have completed the Environmental Project by such time, the City shall have the option of terminating this Agreement by giving notice to Developer as provided for in Article XVIII below and Developer shall promptly reconvey the Property to the City at no cost to the City.
- B. Replatting Upon the signing of this Agreement, Developer agrees to cause the Property to be replatted in substantial conformance with Exhibit C and in conformance with the City's Uniform Development Code and Minnesota State Statute. City agrees to cooperate with Developer in said replatting process. If Developer shall not have completed the process of replatting the Property within one hundred fifty (150) days of the date of execution of this Agreement, City shall have the option of terminating this Agreement by giving notice to Developer as provided for in Article XVIII below. In such event, Developer shall promptly reconvey the Property to the City, providing the City with good title, at no cost to the City.

- C. Infrastructure The City confirms that Developer will be able to utilize existing City infrastructure in the way of utilities and streets, that access is available to the Property, and that the utilities are in place.

ARTICLE III

Conditions Precedent to Construction

It is agreed that prior to the commencement of construction of the Housing Project on the Property, Developer shall present the following to City and shall have received the Director's prior approval thereof in writing:

- A. Construction Plans Approved plans, specifications and elevations for the construction of the Project as described above and in Article V below.
- B. Construction Contract Copies of executed contracts between Developer and general contractors for the construction of each portion of the Housing Project, certified by Developer to be a true and correct copy thereof.
- C. Construction Bonds Copies of executed payment bonds and performance bonds provided by each of the above contractors in connection with the construction of each portion, which bonds shall be in the penal amount of not less than one hundred (100%) percent of the contract price under the aforesaid construction contract written by a bonding company or bonding companies licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof which name the City as an additional beneficiary thereof. In lieu of a construction bond, Developer may provide other assurances or guarantees to appropriately assure the City of its ability to complete the construction.
- D. Construction Financing Copies of loan commitments and grant commitments and/or other financial commitments in forms acceptable to City obtained by Developer together with evidence of the extent of Developer's equity participation, if any, in the Project, the total of said

commitments and said equity participation to be in amount not less than the total anticipated cost of developing the Project. As an alternative to such information, Developer may provide other assurances of its ability to complete.

- F. Replat Evidence satisfactory to the Director that replatting of the Property has been completed.
- G. Completion of Environmental Project Evidence satisfactory to the Director that the Environmental Project has been satisfactorily completed.

ARTICLE IV

Conveyance of Property

Upon fulfillment of Developer's obligation pursuant to Articles II and Paragraphs A through F of Article III above, City agrees to convey to Developer and Developer shall take from City the Property for One Dollar (\$1.00) and other good and valuable consideration in the form of Developer's commitments pursuant to this Agreement, subject to all of the terms, covenants and conditions of this Agreement. The conveyance shall occur on a date agreed to by the Director and Developer. City agrees that it will convey "insurable title" to the Property by quitclaim deed and will provide a title commitment for an ALTA Form B owner's policy of title insurance, insuring title to the Property, in the amount issued by Arrowhead Abstract & Title Company of Duluth, Minnesota at least fifteen (15) days prior to the closing date agreed to by the parties, provided that Developer shall pay all costs of securing said title commitment and shall pay all costs associated with securing title insurance insuring title to the Property. Developer shall promptly file the deed of conveyance for recordation among the land records of the Saint Louis County, Minnesota, Recorder's Office and shall pay all costs of recording said deed. Upon recording, Developer shall immediately submit to the City an executed original of the deed showing the date and document numbers of record, or a duly certified copy of the filed original. In addition to the foregoing provisions, such conveyance of title shall be subject to:

- A. covenants, conditions, restrictions, declarations and easements of record;
- B. the reservation of minerals and mineral rights by the State of Minnesota;

- C. unpaid real estate taxes and assessments;
- D. restrictions related to the use or improvement of the Property without effective forfeiture provision;
- E. any law, ordinance, or governing regulations including but not limited to building and zoning ordinances restricting, regulating or prohibiting the occupancy, use, enjoyment, improvement or subdivision of the Property; and
- F. the terms and provisions of this Agreement.

ARTICLE V

Project Plans

- A. Plans, Specifications and Elevations No less than twenty (20) days prior to the commencement of construction of the Moderate Income Housing Project or the W & L Housing Project or such lesser time as approved by City, Developer shall submit working drawings, specifications and elevations therefor together with detailed site, grading, utility and landscaping plans and elevations of such Project, as the Director reasonably deems necessary, to the Director for approval. Such approval may not be unreasonably withheld. All such plans, specifications and elevations shall be in conformity with this Agreement, with the site plan and with all applicable laws, ordinances, rules, regulations and requirements of the City, State of Minnesota and United States of America. If the Director rejects such plans, specifications and elevations in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within fifteen (15) days of said notice. The provisions of this Subparagraph relating to approval, rejection and resubmission of corrected plans hereinabove provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until

said plans, specifications and elevations have been approved by the Director. The Director's acceptance of Developer's plans, specifications and elevations shall not constitute a waiver of building code or ordinance or other developmental duties imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with said plans, specification and elevations and any revisions thereto.

- B. Changes After Initial Approval Any material changes made to plans by Developer after initial approval of the Director shall be submitted to the Director for acceptance in the same manner provided for in Paragraph A above.

ARTICLE VI

Construction

- A. Construction Upon the fulfillment of the Developers obligations provided for in Articles II, III, IV and V above, Developer shall promptly commence construction of the Housing Project in conformance with the plans and construction contract approved hereunder. Construction of the Housing Project shall be completed not later than December 31, 2016 except that City, through the Director, may agree to extend said time for completion upon the request from Developer therefor.
- B. Developer to Bear All Costs Developer specifically agrees to bear all costs related to the development, completion and operation of the Project and any modifications thereto, except that the cost of the Environmental Project shall be reimbursed by the City as provided herein and 25% of the cost of the concrete removal up to \$12,085 shall also be reimbursed by the City.
- C. Progress Reports Until construction of the Housing Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by City as to the actual progress of Developer with respect to the Project.

- D. Certificate of Completion Promptly upon completion by Developer, in accordance with this Agreement, of the construction of the Project, City shall furnish to Developer an appropriate certificate so certifying. No such certification shall be issued until all elements of the Project have been completed. Such certification by City shall constitute a conclusive determination of satisfaction of construction obligations of Developer undertaken pursuant to this Agreement.

ARTICLE VII

Developer's Operating Covenant

Developer further covenants and agrees that during the time that Developer is in possession or control of any portion of the Property, in its operations and use of the Property it will:

- A. Maintenance At all times cause the Property and Project to be operated, and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Property and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The obligation to maintain the Property shall include but not be limited to maintenance of the Property, including snow removal, grass cutting and landscape maintenance, and all other exterior maintenance to said Property.
- B. Utilities Pay any and all charges for utilities furnished to the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable TV, and electrical power.
- C. Licenses and Permits Preserve Developer's existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs and to be qualified to do business in each jurisdiction where its ownership of property or the conduct of its business requires such qualifications; provided, however, that nothing

herein contained shall be construed to obligate it to retain or preserve any of its licenses, permits or consents which are no longer useable.

- D. Obey All Laws Conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested by Developer in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Property.
- E. Payment of Taxes Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Property.
- F. Assessment Fees and Charges To pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Property, or any part there.
- G. Obligations and Claims Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against as and when the same becomes due and payable other than any thereof whose validity, amount or collectability is being contested in good faith by appropriate proceedings.

ARTICLE VIII

Provision Against Liens, Assignments and Transfers

- A. Provision Against Liens
Except for encumbrances permitted pursuant to Paragraph B below, the Developer shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project, the Property or any part thereof which would

materially or adversely affect the City's interest in this Agreement prior to the issuance of the Certificate of Completion referred to in Paragraph D of Article V above, provided that if Developer shall first notify City of its intention to do so and post such security as City reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as City does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

B. Provision Against Assignments, Transfers or Change in Identity of Developer

The parties hereto acknowledge that City is relying upon the qualifications and identity of Developer to construct, operate and maintain the Project and the Property. Therefore, except for the purposes of obtaining financing as hereinafter described and otherwise approved by this Agreement, Developer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Developer, the Project, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and except for mortgaging approved in writing by the Director, Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder. If any assignment of Developer's obligations under this Agreement is approved, any such assignee shall explicitly assume the obligations of Developer under this Agreement and Developer remains principally liable for the performance of Developer's obligations under this Agreement.

ARTICLE IX
Indemnification

A. By Developer

Developer will to the fullest extent permitted by law, defend, indemnify and save City and City and their officers, agents, servants, employees and any person who controls City or City within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorney's fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Property or any part thereof and the construction or installation of the Project on any portion of the Property, except for active negligence and willful misconduct of the indemnified parties herein. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by Developer of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by the Developer; or
4. Any violation of any law, ordinance, court order or regulation affecting the Property or the Project, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and

save the City and its officers, agents, servants and employees and any person who controls the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorney's fees and expenses, causes of action on the Property from and after the date of completion of the Environmental Project which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or on the Property of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing on the Property.

C. Indemnification Procedures

Promptly after receipt by City of notice of the commencement of any action with respect to which Developer is required to indemnify the City under this Article, the City shall notify the Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the Developer shall assume the defense of such action, including the employment of counsel satisfactory to the City and the payment of expenses. In so far as such action shall relate to any alleged liability of

the City with respect to which indemnity may be sought against the Developer, the City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the Developer.

ARTICLE X

Insurance

Developer shall purchase and maintain, or cause to be purchased and maintained, such insurance as will protect Developer and City against risk of loss or damage to the Project and/or the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project and the Property, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following.

A. Insurance During Construction

Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance

Developer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed One Thousand and No/100ths Dollars (\$1,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of

the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of Developer, City, any subtenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and Developer shall waive all rights against City for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than One Million Five Hundred and No/100ths Dollars (\$1,500,000.00) in aggregate for personal injury, bodily injury and death, and for property damage. If per person limits are specified, they shall be for not less than One Million Five Hundred and No/100ths Dollars (\$1,500,000.00) per person and be for the same coverages. Contractor shall also require such liability coverage of his subcontractors unless they are insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions;
- f. Worker's Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers liability coverage shall be maintained in limits of

One Hundred Thousand and No/100ths Dollars
(\$100,000.00) per employee.

B. Requirements for All Insurance

All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota. The insurance requirements set forth in this Article may be met by means of primary coverage or excess coverage.

C. Certifications

The Developer shall be required to supply to the City written certifications of insurance as required by the City requiring the insurer to give the City thirty (30) days' written notice prior to cancellation or modification of said insurance.

ARTICLE XI

Defaults and Remedies Therefor

A. Developer Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement.

- a. Developer 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 Developer pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Developer 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.

- b. Developer shall permit valid liens, not cured or contested within thirty (30) days, to be placed on the Property, or any structure thereon or Developer loses title to the Property or any structure thereon or both with the exception of assignments approved pursuant to the terms of this Agreement.
- c. Developer 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 as made as to Developer or its business; or Developer 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 Developer 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 thirty (30) 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 Developer's properties or fails to have dismissed or vacated within thirty (30) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

2. General Remedies

Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Developer:

- a. Seek and be entitled to monetary damages, including consequential damages, from Developer for any damages incurred by City as a result of Developer's default.
- b. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Developer's violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
- c. Seek and be entitled to reconveyance of the Property, providing the City with good title, at no cost to the City.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

3. Consequence of Non-Complete Project

Notwithstanding anything contained herein, Developer, on 30 days' notice provided to City may terminate its activity under this Agreement, provided that Developer shall complete any construction it has commenced and shall reconvey any unused or undeveloped portion of the Property to the City at no cost, providing the City with good title to such property.

B. Non-Waiver

The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

C. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

D. Attorneys' Fees

In the event that either party is in Default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XII

Force Majeure

Under the terms of this Agreement, neither the City nor Developer shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE XIII

Representations by City

City represents that as of the date hereof:

- A. It is a lawfully constituted a municipal corporation under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of City, threatened against City or any property of City in any court or before any Federal, State, municipal or governmental agency which, if

decided adversely to City, would have a material adverse effect on the Project.

- C. City has investigated and has no knowledge that a City official, or employee of City is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- D. City shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

ARTICLE XIV

Developer's Representations and Warranties

Developer represents that as of the date hereof:

- A. It is a lawfully constituted non-profit corporation under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. That it is fully competent to acquire the Property and to construct and equip the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State and Federal laws and local versions thereof or similar laws at its own expense.
- C. That there are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer could have a material adverse effect upon Developer or the Project, and that Developer is not in default of any order of any court or governmental agency.

- D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been occurred.
- E. That Developer has investigated and has no knowledge that any officer, director, agent or employee of Developer is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects. If necessary Developer agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.

ARTICLE XV

Term

The term of this Agreement shall commence upon its execution and continue until December 31, 2016 unless this Agreement is otherwise terminated as herein before provided. Notwithstanding the above, any terms of this Agreement which by their nature extend beyond termination of this Agreement shall survive and bind the parties and their successors and assigns. Additionally, upon satisfactory completion of construction of each home, City agrees to terminate this Agreement with respect to such home so as to facilitate the sale thereof.

ARTICLE XVI

Runs With the Land

This Agreement shall be deemed to run with the land and shall ensure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE XVII

Recordation

Upon execution of this Agreement by all parties, Developer shall record this Agreement in the office of the St. Louis County Recorder and/or the Registrar of Titles (as applicable) and shall pay all costs associated therewith. Upon recording, Developer shall immediately submit to the City an executed original of this Agreement showing the date and document numbers of record, or a duly certified copy of the filed original.

ARTICLE XVIII

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 City:

City of Duluth
Director of Planning and Construction Services
Room 207 City Hall
Duluth, MN 55802

In the case of Developer:

One Roof Community Housing
12 East 4th Street
Duluth, MN 55805
Attn: Cliff Knettel

With copies to:

Hanft Fride, A Professional Association
1000 US Bank Place
130 W. Superior Street
Duluth, MN 55802
Attn: William M. Burns, Esq.

ARTICLE XIX

Applicable Law

This Agreement together with all of its Articles, 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.

ARTICLE XX
Entire Agreement

This Agreement 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.

IN WITNESS WHEREAS, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH,
a Minnesota municipal corporation

ONE ROOF COMMUNITY HOUSING,
a Minnesota nonprofit corporation

By: _____
Don Ness
Its: Mayor

By: _____
Its: _____

Attest:

City Clerk

Approved:

Assistant City Attorney

Countersigned:

City Auditor

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____ 2015, by _____, the _____ of One Roof Community Housing, a Minnesota nonprofit corporation, on behalf of the organization.

Notary Public

STATE OF MINNESOTA)
COUNTY OF ST. LOUIS) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Don Ness and Jeffrey J. Cox, Mayor and City Clerk of the City of Duluth, a Minnesota municipal corporation, on behalf of City.

Notary Public

This instrument was drafted by:
Joan M. Christensen
Assistant City Attorney
410 City Hall
Duluth, MN 55802
(218) 730-5490

EXHIBIT A

SUB-RECIPIENT FUNDING AGREEMENT CONTAMINATION CLEANUP GRANT PROGRAM JAY STREET PROJECT

THIS AGREEMENT, is entered into by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota ("City"), and One Roof Community Housing, a Minnesota nonprofit corporation (the "Subgrantee").

WHEREAS, the City applied to and received approval for funds in the amount of \$214,064.00 from the State of Minnesota, acting by and through its Department of Employment and Economic Development, Business and Community Development Division ("DEED") under its Contamination Cleanup Grant Program (the "Cleanup Grant") pursuant to Minnesota Statutes §§ 116J.551-.559; and

WHEREAS, the City desires to award proceeds of the Cleanup Grant in the amount of \$214,064.00 (the "Subgrant") to Subgrantee, to assist Subgrantee with the development of the site on the real property described on attached **Exhibit A** (the "Property") by funding a portion of the costs of those elements of the development identified in the Cleanup Grant Agreement identified below (the "Project").

WHEREAS, the City will provide Subgrantee an additional \$71,355.00 on costs identified in paragraph 4.1 in the Cleanup Grant Agreement as the required local match under the Cleanup Grant (the "Match Funds").

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

1. **AWARD.** The City awards the Subgrant to Subgrantee for assessment and/or clean-up activities as are described in Grant Agreement No. CCGP-14-0003-Z-FY14 between the City and DEED attached to this Agreement as **Exhibit B** (the "Cleanup Grant Agreement") and the Application to DEED, submitted on May 1, 2014, on file in the City's Business Development Office, both of which are incorporated into this Agreement and are hereinafter referred to as the "Documents." In the event of a conflict between the Cleanup Grant Agreement, this Agreement and the Grant Application to DEED, the documents shall be deemed to be controlling in the following order: 1) Grant Agreement No. CCGP-14-0003-Z-FY14, 2) this Agreement, and 3) the Grant Application. The Subgrant and Match Funds must be used exclusively to pay or reimburse only expenses authorized under the Cleanup Grant Agreement. Administrative costs incurred by the Subgrantee are not eligible for reimbursement under this Agreement. Notwithstanding anything to the contrary, the Subgrantee understands and agrees that any reduction or termination of the Cleanup Grant will result in a like reduction or termination of the Subgrant, and that any material change in the timeline or scope of the Project as set forth in the Documents must be approved in writing by the City and DEED.

2. **PERFORMANCE.** The Subgrantee must comply with all requirements applicable to the City in the Documents. The Subgrant dollars are grant funds only and cannot be used, treated or converted into any type of loan. Subgrantee's default under the Documents will constitute noncompliance with this Agreement. If the City finds that there has been a failure to comply with the provisions of this Agreement or that reasonable progress on the Project has not been or will not be made, the City may take action to protect its interests, including refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed. If a correction to substandard performance is not completed by the Subgrantee within 30 calendar days, or such longer period specified by the City's Business Resources Manager (the "Manager") after written notice by the City, the City may terminate this Agreement.

3. **TIME OF PERFORMANCE.** Subgrantee must complete the Project on or before May 30, 2016. In order to ensure that all funds are drawn prior to the City's Cleanup Grant Agreement term end date, all payment requests from Subgrantee to the City must be received by the City at least 45 days prior to said term end date. The City is not obligated to pay for any Project costs incurred thereafter.

4. **CONDITIONS PRECEDENT TO DISBURSEMENT.** The following requirements are conditions precedent to the City's disbursement of any of the Subgrant proceeds or Match Funds:

A. The Subgrantee must have provided evidence satisfactory to the Manager showing that Subgrantee has title in fee simple or site control of the Property as required by the Documents or otherwise meets the requirements of DEED.

B. The Subgrantee must have provided to the Manager such evidence of compliance with all of the provisions of this Agreement and the Documents as the City may reasonably request.

5. **DISBURSEMENT.** It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$285,419.00 payable from Fund No. 255-020-5458 (Economic Development Fund, Planning Department, Payment to Developers). The City will make disbursements only upon receipt of a written payment request in the form provided by DEED (the "Payment Request Form") from Subgrantee acceptable to the City and DEED. Payment requests may be made no more than once per month and must be accompanied by invoices supporting the reimbursement of Subgrantee of Approved Project Costs and such other documentation related thereto as shall be reasonably requested by the Manager. The Payment Request Form must have attached all invoices from each provider to be paid or cost to be reimbursed. The City will, upon its approval of the Payment Request Form and supporting documentation, forward it to DEED for approval. Upon DEED approval of the Payment Request Form and receipt by the City of the approved amounts of Cleanup Grant funds, the City will disburse the approved amount of Subgrant funds and Match Funds in accordance with the information provided in the Payment Request Form.

6. **NOTICES.** Communication and details concerning this Agreement must be directed to the following Agreement representatives:

CITY: City of Duluth
Attn: Heidi Timm-Bijold
402 City Hall
411 W. 1st Street
Duluth, MN 55802

Telephone: (218) 730-5324

Subgrantee: One Roof Community Housing

Attn: Cliff Knettel

Address: 12 East 4th Street
Duluth, Minnesota 55805

Telephone: 218-727-5372

7. **GENERAL CONDITIONS.**

A. **General Compliance.** The Subgrantee agrees to comply with all applicable federal, state and local laws and regulations governing the Project and Cleanup Grant funds provided under this Agreement, including without limitation pursuant to Minnesota Statutes §§ 116J.551-.559, all applicable OSHA regulations, especially the federal Hazardous Waste Operations and Emergency Response Standards (29 C.F.R. 1910.120 and 29 C.F.R. 1926.65) and when applicable all federal Davis Bacon and related act requirements.

B. **Subcontracts.**

1. *Compliance with Laws.* The Subgrantee must require that contractors performing work being paid with the Subgrant funds comply with all applicable federal, state and local laws and regulations governing the Project.

2. *OSHA.* Subgrantee must require that contractors performing work being paid with the Subgrant funds be in compliance with all applicable OSHA regulations, especially the Federal Hazardous Waste Operations and Emergency Response Standards (29 C.F.R. 1910.120 and 29 C.F.R. 1926.65).

C. **Termination.** In the event the Cleanup Grant Agreement is terminated, this Agreement shall contemporaneously terminate. Upon termination, Subgrantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed. The terms of this Subparagraph shall be subject to the provisions of Paragraph 8 below.

D. **Independent Contractor.** Nothing contained in this Agreement is intended to, or may be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subgrantee will at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because the Subgrantee is an independent contractor.

E. **Indemnification and Hold Harmless.** The Subgrantee shall hold harmless, defend and indemnify the City and DEED from any and all liability, claims, actions, suits, charges, damages, losses, costs, expenses, and judgments whatsoever, including reasonable attorneys' fees, that arise directly or indirectly out of the Subgrantee's, its contractor's or subcontractor's performance or nonperformance under this Agreement. Claims included in this indemnification include any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B; the Federal Comprehensive

Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended, United States Code Title 42, Sections 9601 et. seq.; and the Federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code Title 42, Sections 6901 et. seq.

F. Insurance.

1. *Insurance Required.* During the term of this Agreement, Subgrantee and its contractors and subcontractors rendering services being paid with funds from this Agreement shall procure and maintain Public Liability and Automobile Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$1,500,000 per occurrence for personal injury, bodily injury and death, and limits of \$1,500,000 for property damage liability and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. If per person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. Coverages of Subgrantee and its contractors/subcontractors shall include:

- a. Public liability including premises and operations coverage;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnity provisions;
- f. Products—completed operations; and
- g. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement.

2. *Additional Insurance Requirements.* All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in Minnesota. The City shall be named as an additional insured under the Public Liability and Automobile Liability Insurance. The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms: 1) ISO Additional Insured Endorsement (CG-1010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002), or their equivalent as approved by the City's attorney. The City does not represent or guarantee that the types of limits or coverages provided above are adequate to protect Subgrantee's interests and liabilities.

3. *Certificates of Insurance.* Certificates showing that the above-described insurance is carried in the specified amounts shall be furnished to the City prior to the disbursement of any of the Subgrant proceeds, and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement. The form of each certificate of insurance shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to the City will render any such change or changes in said policy or coverages ineffective as against the City.

4. *Contractor/Subcontractor Evidence of Insurance.* The Subgrantee must not commence work until any and all contractors/subcontractors have obtained the required proof of insurance which clearly evidences required insurance coverages. If the Subgrantee fails to

furnish proof of insurance coverages from the contractors/subcontractors when requested by the City, the City may withhold payments and/or pursue any other rights or remedy allowed under this Agreement, law, equity, and/or statute.

8. **ADMINISTRATIVE REQUIREMENTS.**

A. **Accounting Standards.** The Subgrantee agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this Agreement.

B. **Records.**

1. *Retention.* Audits and records, including but not limited to all financial and environmental documents related to the funds provided under this Agreement, shall be accessible to authorized representatives of the City for purposes of examination and audit. In addition, the Subgrantee shall give the City, the Legislative Auditor, and the State Auditor's Office, through any authorized representatives, access to and the right to examine all records, books, papers, and documents related to this Agreement for a minimum of six years from the end of the Cleanup Grant Agreement term end date.

2. *Close-Out.* The Subgrantee's obligation to the City does not end until all close-out requirements are completed. Activities during this close-out period include: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), determining the custodianship of records and resolving audit findings.

C. **Procurement.** The Subgrantee must maintain an inventory record of all nonexpendable personal property procured with funds provided under this Agreement. Program income is income generated from grant-funded activities, including interest earned on grant funds. All unexpended program income must revert to the City upon termination of this Agreement.

9. **MISCELLANEOUS.**

A. **Assignability.** The Subgrantee may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of the Manager; provided, however, that claims for money due or to become due to the Subgrantee from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer must be furnished promptly to the City.

B. **Antitrust.** The Subgrantee hereby assigns to the State of Minnesota any and all claims for overcharges for goods and/or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

C. **Governing Law and Venue.** This Agreement will be governed by, and construed 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.

D. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all of which taken together constitute one and the same agreement.

E. **Survival.** Any Terms of this Agreement which by their nature extend beyond termination of this Agreement shall survive and bind the parties and their successors and assigns.

F. **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.

F. **Entire Agreement.** This Agreement, including Exhibits A and B, constitutes the entire Agreement between the City and Subgrantee and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto.

CITY OF DULUTH

ONE ROOF COMMUNITY HOUSING

By: _____
Its Mayor

By: _____
Its: _____

Date: _____

Date: _____

Attest:

Its City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A
To Subrecipient Funding Agreement
Legal Description of the Property

Lots 1 through 16, inclusive, Block 104, LONDON DIVISION

STATE OF MINNESOTA
GRANT CONTRACT

SC #: 80009

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
BUSINESS AND COMMUNITY DEVELOPMENT DIVISION

Contamination Cleanup Grant Contract

Grant No: CCGP-14-0003-Z-FY14
Jay Street Gas Holder Project

This grant contract is between the State of Minnesota, acting through the Department of Employment and Economic Development, Business and Community Development Division, (STATE) and the City of Duluth ("GRANTEE").

Recitals

1. Under Minn. Stat. § 116J.554 the State is empowered to enter into this grant.
2. The State is in need of programs to do the following: reduce the potential threat of harmful contaminants to the public's health and the environment; to create new jobs and increase the tax base; and provide other public benefits by redeveloping polluted and unproductive sites.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State.

Grant Contract

1 Term of Grant Contract

1.1 *Effective date:* June 5, 2014.

Pursuant to Minn. Stat. § 16B.98, subds. 5 and 7, no payments will be made to the Grantee until this grant contract is fully executed.

1.2 *Expiration date:* June 30, 2014.

- 1.3 *Survival of Terms.*** The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. Accounting; 10. Government Data Practices; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; 15. Data Disclosure; 16. Reporting; 18. Conflict of Interest; 19. Minnesota Business Subsidy Law; and 20. State and Federal Environmental Standards.

2 Grantee's Duties

- 2.1 *Duties, Deliverables, and Completion Dates.*** The Grantee, who is not a state employee, will perform the following duties and provide the deliverables as outlined below.

(a) Administer these grant funds in accordance with Minn. Stat. § 116J.551 – 559 and the application submitted on May 1, 2014 for funding for the Jay Street Gas Holder Project, which is incorporated into this grant agreement and the provisions of this grant agreement. Any modification made to the approved application must be approved by the State.

- (b) Promptly notify the State of any proposed material change in the scope of the project as submitted in the grant application, budget as defined in Section 4.1(a) below, or entire project's completion date, which must be approved by the State, prior to implementation.
- (c) Provide evidence to the State prior to the closeout of the grant that the cleanup and/or investigation has been completed and approved by the Minnesota Pollution Control Agency.
- (d) It is expected that the site will be redeveloped as proposed in the grant application and upon which funding was based. Any material change in the development plans for the site must be presented to the State and approved.
- (e) Adhere to all other requirements of this grant agreement.

2.2 **Provisions for Contracts and Sub-grants.**

- (a) **Contract Provisions.** The Grantee must include in any contract and sub-grant, in addition to provisions that define a sound and complete agreement, such provisions that require contractors and sub-grantees to comply with applicable state and federal laws. Along with such provisions, the Grantee must require that contractors performing work covered by this grant be in compliance with all applicable OSHA regulations, especially the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).
- (b) **Ineligible Use of Grant Funds.** The dollars awarded under this grant agreement are grant funds and shall only be used by Grantee or awarded by Grantee to third parties as grant funds and cannot take the form of a loan under any circumstance. Grantee shall not use, treat, or convert the grant funds into an interest bearing loan, a non-interest bearing loan, a deferred loan, a forgivable deferred loan or any other type of loan. Further, Grantee shall include in any contract or sub-grant awarding the grant funds to a third party all the provisions and requirements of this grant agreement, including the requirement that these dollars are grant funds only and cannot be used, treated or converted into any type of loan.
- (c) **Job Listing Agreements.** Minn. Stat. § 116L.66, subd.1, requires a business or private enterprise to list any vacant or new positions with the state workforce center if it receives \$200,000 or more a year in grants from the State. If applicable, the business or private enterprise shall list any job vacancy in its personnel complement with MinnesotaWorks.net at www.minnesotaworks.net as soon as it occurs.
- (d) **Payment of Contractors and Subcontractors.** The Grantee must ensure that all contractors and subcontractors performing work covered by this grant are paid for their work that is satisfactorily completed.

3 **Time**

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant, time is of the essence.

4 **Consideration and Payment**

4.1 **Consideration.** State will pay the Grantee under this grant contract as follows:

(a) **Project Costs.** The following table represents the total Project Costs.

Activities	Amount
Soil and Gas Sampling	\$13,544.00
Soil Management	\$144,734.00
Observation and Reporting	\$15,491.00
Concrete Removal and Disposal	\$33,000.00
Imported Fill	\$78,650.00
TOTAL	\$285,419.00

(b) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$214,064.00 (TWO HUNDRED FOURTEEN THOUSAND SIXTY-FOUR DOLLARS).

In accordance with Minn. Stat. § 116J.554, subd. 1, the grant may pay for up to 75 percent of the project costs for a qualifying site. This requires a local match of 25 percent. For the purpose of this project, the local match portion is \$71,355.00. Of the total match requirement, 12 percent of the cleanup costs as defined in Minn. Stat. § 116J.552, subd. 2 must come from the municipality's general fund, a property tax levy for that purpose, or other unrestricted money available to the municipality. The rest of the local match may be paid with tax increments, regional, state or federal money available for the redevelopment of brownfields or any other money available to the municipality.

4.2. **Payment**

(a) **Invoices.** The State will disburse funds to the Grantee pursuant to this Contract, based upon payment requests submitted by the Grantee and reviewed and approved by the State. Payment requests must be accompanied by supporting invoices that relate to the activities in the approved budget. The amount of grant funds requested by the Grantee cannot exceed seventy five percent (75%) of the total approved project costs incurred by the Grantee as supported by invoices. The State will provide payment request forms.

Invoices may be submitted on a monthly basis; however, at a minimum, an invoice for an award shall be submitted by the grantee for expenses incurred 25 days after the end date of the state fiscal year of June 30th. In order to ensure that all funds are drawn prior to the expiration date of the grant, all payment requests must be received at least 30 days prior to the grant-term expiration date.

(b) **Eligible Costs.** Eligible costs include the costs identified in the Section 4.1(a) of this Contract that are incurred during the contract period. The Grantee may not use these funds to provide loans to other entities or for administrative costs associated with managing the project this grant is funding. Pursuant to Minn. Stat. § 116J.552, subd. 2, costs of implementing the response action plan (RAP) incurred before the grant award date may be eligible at the discretion of the State, if the costs were completed after the RAP was approved by the Minnesota Pollution Control Agency and the RAP was approved within 180 days of the application deadline. Costs incurred for the development of a RAP incurred prior to grant award may be considered eligible at the discretion of the State. Any reimbursement made for services provided prior to the effective date of the grant will be governed by the terms of the grant.

(c) **Program Income.** Program income generated from grant-funded activities on hand at the end of the grant period must be returned to the State unless the State has approved a re-use of the income.

5 Conditions of Payment

All services provided by the Grantee under this grant contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 Authorized Representative

The State's Authorized Representative is Erin Welle, 332 Minnesota Street, E200, St. Paul, MN 55101, 651-259-7453, erin.welle@state.mn.us, or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is Ross Lovely, 411 West First Street, Duluth, MN 55802, 218-730-5323, rlovel@duluthmn.gov. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

7 Assignment, Amendments, Waiver, and Grant Contract Complete

7.1 Assignment. The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office.

7.2 Amendments.

(a) **Amendments.** Any amendments to this grant contract, with the exception of Grant Adjustment Notices (GANs), must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

(b) **Grant Adjustment Notices (GANs).** GANs must be approved by the State in writing, and require a written change request by the Grantee. A GAN may be used for the purposes of transferring budget amounts between line items that do not change the contract value, or other grant status activity. All other changes require a formal amendment as stated in paragraph 7.2(a).

7.3 Waiver. If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

7.4 Grant Contract Complete. This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 Liability

Subject to the provisions and limitations of Minn. Stat. § 466, the Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

9 Accounting

Under Minn. Stat. § 16B.98, subd. 8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

The Grantee shall maintain adequate financial records consistent with generally accepted accounting principles. The Grantee shall submit accounting system records that track the use of grant proceeds and all matching funds by eligible Project Costs for each year in which grant disbursement and expenditures were made. The records shall reflect both expenditures and revenues and shall be submitted after all grant proceeds and matching funds have been expended or at the State's request.

10 Government Data Practices and Intellectual Property

10.1 Government Data Practices The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

10.2 Intellectual Property Rights. In the event that Grantee secures a copyright protection on any of the materials, reports, or data created as part of the project, the Grantee agrees to and does hereby grant to the State and its officers, agents, and employees, acting within the scope of their official duties, a royalty-free, non-exclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so for use by the State, its divisions, instrumentalities and local subdivisions, all material now or hereafter covered by any such copyright.

11 Workers' Compensation

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12 Publicity and Endorsement

12.1 *Publicity.* Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract.

12.2 *Endorsement.* The Grantee must not claim that the State endorses its products or services.

13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

14.1 *Termination by the State.* The State may immediately terminate this grant contract with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 *Termination for Cause.* The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. If the project is not started on or before the projected start date of December 30, 2015 or such a later date requested by the Grantee and approved by the State, then the State's obligation to fund the Grant will be terminated. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 *Termination for Insufficient Funding.* The State may immediately terminate this grant contract if:

(a) It does not obtain funding from the Minnesota Legislature; or,

(b) If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15 Data Disclosure

Under Minn. Stat. § 270C.65, subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

Other Provisions

16 Reporting

Grantee must submit to the State annual reports on the use of funds and the progress of the Project covering July 1st through June 30th of each year. The reports must be received by the State no later than July 25th of each year. The reports must identify specific Project goals listed in the application and quantitatively and qualitatively measure the progress of such goals. Grant payments shall not be made on grants, or subsequent grant awards made to the grantee, with past due progress reports. In addition, the Grantee shall submit a final report. The State will provide reporting forms.

17 Debarment and Suspension Certification

(If applicable) The Grantee agrees to follow the President's Executive Order 12549 and the implementing regulation "Non-procurement Debarment and Suspension: Notice and Final Rule and Interim Final Rule," found at 53 FR 19189, May 26, 1988, as amended at 60 FR 33041, June 26, 1995, including Appendix B, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions," unless excluded by law or regulation.

18 Conflict of Interest

The Grantee must comply with the Conflict of Interest provisions of Minn. Stat. §§ 471.87 – 471.88.

19 Minnesota Business Subsidy Law

The Grantee must comply, if appropriate, with the Minnesota Business Subsidy Law, Minn. Stat. §§ 116J.993 – 116J.995.

20 State and Federal Environmental Standards

The Grantee must provide evidence that work performed under this grant complies with state and federal environmental standards. An approval from the Minnesota Pollution Control Agency or other appropriate state or federal agency is required upon completion of the cleanup activities.

(The rest of this page is left intentionally blank)

GRANTEE: The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By [Signature]
Mayor
Date 7-11-14

By [Signature]
City Clerk
Date 7-14-14

By [Signature]
City Attorney
Date 7-10-14

By [Signature]
City Auditor
Date 7/23/14

STATE OF MINNESOTA by and through the Department of Employment and Economic Development

By [Signature]
Date 7/30/14

ENCUMBERED:
Department of Employment and Economic Development

By [Signature]
Date Encumbered PO#3-162377 06/30/14

Individual certifies that funds have been encumbered as required by Minn. Stat. 16A.15 and 16C.05.

Grantee: City of Duluth
Grant Name: Jay Street Gas Holder
Grant Number: CCGP-14-0003-Z-FY14

Distribution:
Agency
Grantee
State's Authorized Representative - Photo Copy

Contract # CCGP-14-0003-Z-FY14 Amendment #1 to SC 80009

Contract Start Date: June 5, 2014
Original Contract Expiration Date: June 30, 2014
Current Contract Expiration Date: June 30, 2014
Requested Contract Expiration Date: June 30, 2017

Total Contract Amount: \$214,064.00
Original Contract: \$214,064.00
Previous Amendment(s) Total: \$0.00
This Amendment: \$0.00

This amendment is by and between the State of Minnesota, through the Department of Employment and Economic Development "Grantor" and the City of Duluth "Grantee."

Recitals

1. The Grantor has a contract with the Grantee identified as CCGP-14-0003-Z-FY14, for the cleanup of contamination at the Jay Street Gas Holder project "site".
2. The contract is being amended to extend the contract expiration date to June 30, 2017.
3. The Grantor and Grantee are willing to amend the Original Contract as stated below.

Contract Amendment

In this Amendment deleted contract terms will be **struck out** and the added contract terms will be underlined.

REVISION 1. Clause 1.2 "**Expiration Date**" is amended as follows:

Expiration Date: June 30, 2014 June 30, 2017

The Original Contract and any previous amendments are incorporated into this amendment by reference.

GRANTEE: The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By [Signature]
Mayor
Date 9-18-14

By [Signature]
City Clerk
Date 9-22-14

By [Signature]
City Attorney
Date 9-18-14

By [Signature]
City Auditor
Date 9/24/14

STATE OF MINNESOTA by and through the Department of Employment and Economic Development

By [Signature]

Date 9/30/14

ENCUMBERED:

Department of Employment and Economic Development

By [Signature]

Date Encumbered 09/10/2014 PO#3-162377

Individual certifies that funds have been encumbered as required by Minn. Stat. 16A.15 and 16C.05.

Grant Number: CCGP-14-0003-Z-FY14

EXHIBIT B

Jay Street proposal

- One Roof will be the developer and be responsible for:
 - o Site design and platting
 - o Storm water management planning (grading plan)
 - o Securing contracts with builders (Common Ground and Knutson)
- Eight homes will be constructed in total.
- All building sites will have frontage along either 40th Avenue East or Dodge Street. No homes/lots will front Jay Street or 41st Ave. East at this time.
- There may be more than one builder; One Roof will control the construction.
- Site planning, platting, grading and other site costs will be shared evenly by all 8 lots and that pro-rata cost shall be incorporated into the pro forma for each home.
- Neither the developer nor builders are responsible for the construction/reconstruction of City infrastructure on or within Jay Street or 41st Ave East.

City of Duluth

- Any undeveloped property will be held in ownership by the City of Duluth for development at a later date or preserved as open space for the enjoyment of the community.
- City of Duluth is responsible for all clean-up costs, including local match.
- City of Duluth will convey the development property at no cost to One Roof.

One Roof/Common Ground

- Will construct 8 homes
 - Three homes will be priced below \$214,000.
 - Two homes will be priced between \$125,000-\$300,000 depending on square footage, options, available subsidies, etc.
 - Two homes will be priced between \$225,000-\$325,000 (higher end will be justified for added options, garages, additional bedrooms and bathrooms).
- One Roof will break ground on 1 home by year end (2015)
- Remaining homes will be constructed in 2016.
- All homes will be completed by December 31, 2016.

Design Assumptions

- All homes will meet energy star criteria
- All homes will have a garage (but garage will not be focal point of home)
- There shall be a variety of building designs which may include ranch/rambler, two-story, and bungalow style homes.
- Passive solar/solar features can be incorporated at the will of the builder and/or buyer, but will not necessarily be incorporated into every home. (Energy star ratings can be achieved without these components).

EXHIBIT C

