

**AGREEMENT BY AND BETWEEN
THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation hereto by the City Clerk (the “Effective Date”), by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, (“City”) and the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and political subdivision under the laws of the State of Minnesota, (“DEDA”).

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 work the City of Duluth undertakes through its Housing Trust Fund to invest in new housing development and housing rehab projects pursuant to Duluth City Code Chapter 2, Article XXXII; and

WHEREAS, the City of Duluth’s Housing Trust Fund is able and willing to utilize the granted funds to support the loan programs described in the Duluth Housing Trust Fund Program Guidelines, (“Program Guidelines”), attached as Exhibit A.

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

1. **Grant to the City of Duluth’s Housing Trust Fund.** DEDA hereby agrees to grant to the City Of Duluth the amount of up to One Million and Two Hundred and Fifty Thousand and No/100 Dollars (\$1,250,000.00) (“Grant”), payable from DEDA Fund No. 860, said funds to be deposited into City Fund 266 to be used by the City of Duluth’s Housing Trust Fund in accordance with the terms and conditions hereinafter set forth.
2. **Use of Grant Funds.** The City of Duluth’s Housing Trust Fund shall utilize the Grant funds to create an affordable housing loan program and support loans for site preparation activities under both the Affordable Housing Fund and the General Fund. All Grant proceeds shall be used to extend loans (“Loans”) for eligible housing projects as defined in the Program Guidelines, attached hereto and made part of hereof as Exhibit A. All such Loans shall be made in conformance with said Program Guidelines; provided, however, that in the event that the terms or conditions of the Program Guidelines shall conflict with the terms or conditions set forth in this Agreement, the terms and conditions of this Agreement shall be deemed to be controlling.
3. **Reporting.** The City of Duluth’s Housing Trust Fund will provide regular reports to DEDA which will include a description of activities of the Housing Trust 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 DEDA and the City only upon being reduced to writing and approved with the same formality as the approval of this Agreement.
 - 4.2. *Assignment.* The City agrees that it will neither assign, transfer nor subcontract any rights or obligations under this Agreement without prior written consent of DEDA.
5. **Data and Confidentiality, Records and Inspection.**

- 5.1. The City of Duluth's Housing Trust 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. The City agrees to hold DEDA, its officers, and employees harmless from any claims resulting from the City'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 the City. If the City receives a request to release data referred to in this clause, City must immediately notify and consult with DEDA as to how the City should respond to the request. The City's response to the request must comply with applicable law.
 - 5.2. Records shall be maintained by the City in accordance with requirements prescribed by 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. The City 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. The City shall be responsible for furnishing to DEDA records, data and information as DEDA may require pertaining to matters covered by this Agreement.
 - 5.5. City shall ensure that at any time during normal business hours and as often as DEDA may deem necessary, there shall be made available to DEDA for examination, all of its records with respect to all matters covered by this Agreement. City will also permit DEDA to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials and other data relating to all matters covered by this Agreement.
6. **City of Duluth Housing Trust Fund Representation and Warranties.** The City represents and warrants that:
- 6.1. The City shall perform its duties in a professional and diligent manner and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
 - 6.2. 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 City 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 City contrary to the terms of any instrument or agreement.
 - 6.3. There is no litigation pending or to the best of the City's knowledge threatened against the City 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 City to perform its obligations hereunder.
 - 6.4. The City will not, without the prior written consent of 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 distribution of Grant funds by the Housing Trust Fund pursuant to the Program Guidelines.
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 the City as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. The City and its employees shall not be considered employees of DEDA, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of the City's employees while so engaged, and any and all claims whatsoever on behalf of the City's employees arising out of employment shall in no

way be the responsibility of DEDA. The City's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, 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 shall in no way be responsible to defend, indemnify or save harmless the City from liability or judgments arising out of intentional or negligent acts or omissions of the City 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, the City shall defend, indemnify and hold the DEDA and its 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 arising out of the City's a) breach of this Agreement, or b) its performing the services hereunder, or c) any claims arising in connection with the City's employees or contractors, or d) the use of any materials supplied by the City to the DEDA unless such material was modified by DEDA and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

10. Insurance.

The parties acknowledge that the City is self-insured with respect to comprehensive liability with a combined single limit of \$1,500,000 as set forth in Minnesota Statutes Chapter 466. The City represents that it is self-insured with respect to Workers' Compensation claims.

11. Defaults and Remedies.

11.1. *General Events of Default.* The following shall be deemed to be general events of default by the City 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. The City 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 the City 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 the City 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. The City 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 the City or its business; or the City 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 the City 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 the City's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of the City of any trustee, receiver or liquidator of any material part of the City's properties.

11.2. *General Remedies.* Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by the City:

11.2.1. Seek and be entitled to monetary damages from the City for any damages incurred by DEDA as a result of the City's default.

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

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

11.2.4. Terminate this Agreement.

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
City Hall Room 160 Duluth MN 55802

If to the City: City of Duluth
411 W First Street
City Hall Room 160 Duluth MN 55802
Attn: Director of Planning and Economic Development

13. **Civil Rights Assurances.** The City, 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.** The City agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth 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.

(Signature page follows)

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

City of Duluth

Duluth Economic Development Authority

By: _____
Mayor

By: _____
Its President

Attest:

City Clerk

By: _____
Its Secretary

Dated: _____

Countersigned:

City Auditor

Approved as to Form:

City Attorney

Exhibit A

Duluth Housing Trust Fund Program Guidelines

What is the Housing Trust Fund?

The Duluth Housing Trust Fund (the “HTF”) is a program developed by the City of Duluth (the “City”) to support Duluth’s existing and future housing stock by addressing gaps in local housing financing. The HTF program aims to achieve the following goals:

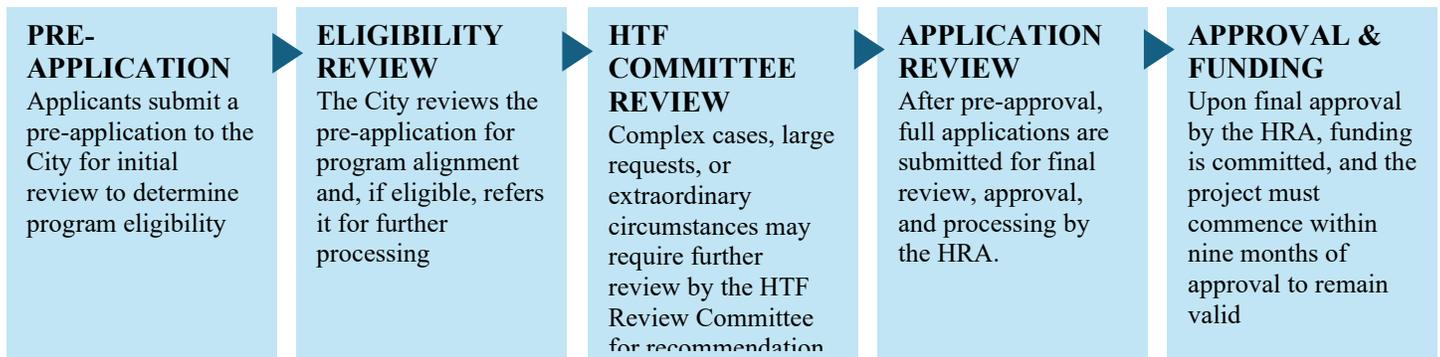
- Increase housing stock in Duluth, particularly affordable units.
- Invest in Duluth neighborhoods, making affordable units available citywide.
- Remove blight, improve safety, and encourage pride in our neighborhoods.
- Leverage existing municipal infrastructure.
- Promote density wherever possible

How does the Program work?

The HTF is designed to offer gap financing through low- or no-interest loans to developers who are working on eligible housing projects. Projects must be approved by the Housing and Redevelopment Authority (HRA) before funding is allocated. Applications are reviewed and funds are disbursed on a first-come, first-served basis.

Restrictions: 1) No entity may hold more than \$1M in HTF loans at one time and no entity may hold more than two open HTF loans in any amount at one time; 2) Borrowers agree to enter a development agreement that will be recorded against the property for a fifteen-year term.

Program Process



HTF Review Committee

The HTF Review Committee, created pursuant to Section 2-171 of the City Code, will provide review and recommendation of applications in the following cases:

- Requests that do not clearly fall under the City Program
- Requests of \$500,000 or more
- Requests that would draw the HTF balance below \$300,000
- Requests that present extraordinary circumstances not addressed in the Program Guidelines but are recommended by staff

Ineligible Expenses

HTF funds are to be used for hard construction costs, utility infrastructure costs, and blight removal costs only. The following are uses that are NOT eligible for payment of HTF funds:

- Expenses for pre-development activities, studies, promotions, evaluations;
- General operating costs of projects such as salaries, benefits, supplies, utilities, insurance;
- Administrative or other overhead costs of projects;
- Furnishings, fixtures, and equipment and non-architectural decorations;
- Soft costs related to or incidental to projects, including legal, architectural, engineering, market assessment, appraisal or other services;
- Public infrastructure costs such as streets, sidewalks, lights, sewers, utilities that do not directly serve the project property;
- Property acquisition costs

Duluth Housing Trust Fund Loan Programs

	Affordable Housing Fund	General Fund
Purpose	Provide low or no-interest construction loans for eligible affordable housing projects.	Provide low or no-interest construction loans for eligible housing projects.
Eligible Projects	<ul style="list-style-type: none"> - New construction or redevelopment of affordable housing projects. - Utility infrastructure, blight removal, and environmental costs necessary to complete new housing construction or redevelopment. 	<ul style="list-style-type: none"> - New construction or redevelopment of housing projects. - Utility infrastructure, blight removal, and environmental costs necessary to complete new housing construction or redevelopment.
Loan Amount	<ul style="list-style-type: none"> -Up to \$1,000,000 for qualifying projects -Up to \$300,000 for single family detached homes 	<ul style="list-style-type: none"> -Up to \$1,000,000 for qualifying projects -Up to \$300,000 for single family detached homes
Eligible Expenses	Hard construction costs, utility infrastructure, and/or blight removal costs	Hard construction costs, utility infrastructure, and/or blight removal costs
Interest Rates	0%-3% interest	0%-5% interest
Term Length	Max Term: 18 months (24 months for projects that include demolition) (*staff may approve extensions up to 6 additional months)	Max Term: 18 months (24 months for projects that include demolition) (*staff may approve extensions up to 6 additional months)
Forgivable Component	<ul style="list-style-type: none"> -up to \$10K with Review Committee recommendation (for sale) -up to \$50K with Review Committee recommendation (rentals) 	<ul style="list-style-type: none"> -up to \$10K with Review Committee recommendation (affordable for sale) -up to \$50K with Review Committee recommendation (affordable rentals)
Affordability Requirement	<ul style="list-style-type: none"> - All rental units funded must be affordable for tenants earning $\leq 80\%$ AMI (priority to projects affordable $< 50\%$ AMI) - All for-sale units funded must be affordable for buyers earning $\leq 100\%$ AMI (priority to projects affordable $< 80\%$ AMI) - Borrowers will be required to submit annual reports documenting affordability 	<p>No affordability requirement. Projects that incorporate affordable units will be eligible for reduced interest rates. Borrowers will be required to submit annual reports documenting affordability.</p> <p>Average rent = 100% AMI+ = 5% Average rent = 81-99% AMI = 4% Average rent = 71-80% AMI = 3% Average rent = 61-70% AMI = 2% Average rent = 51-60% AMI = 1% Average rent $\leq 50\%$ AMI = 0%</p> <p>Affordable for-sale $< 80\%$ AMI = 0-2%</p>

