

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0030R

AS AMENDED

RESOLUTION AUTHORIZING A REQUEST FOR HUD FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR THE 2014 PROGRAM YEAR AS WELL AS APPROVING THE REALLOCATION OF CERTAIN PRIOR CDBG FUNDS AND AUTHORIZING AGREEMENTS WITH APPROPRIATE AGENCIES.

CITY PROPOSAL:

WHEREAS, City Council Resolution No. 14-0029, adopted January 13, 2014, approved FY 2014 annual action plan portion of the 2010-2014 consolidated plan; and

WHEREAS, the secretary of HUD is authorized to make grants to cities and/or counties to finance local community development programs, approved in accordance with the provisions of Title I of said Act, as well as grants under the Cranston-Gonzales National Affordable Housing Act of 1990, as amended, (the HOME program) and the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the emergency solutions grant - ESG - program).

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to make and submit appropriate documentation to HUD for those projects and corresponding funding levels as set forth below:

2014 CITY OF DULUTH COMMUNITY DEVELOPMENT BLOCK

GRANT (CDBG) PROGRAM-FUND 262, AGENCY 020, OBJECT 5434 PROJECT CD14CD

SUB

<u>PROJECT</u>	<u>ACTIVITY</u>	<u>AMOUNT</u>	<u>PROJECTS</u>
			<u>HOUSING PROJECTS</u>
HOUS	1734	\$ 917,800 <u>\$885,800</u>	Housing Resource Connection - One Roof/HRA
			<u>ECONOMIC DEVELOPMENT PROJECTS</u>
ECDV	2412	\$ 128,000	SOAR Duluth At Work - SOAR Career Solutions
ECDV	1244	\$ 72,000	CHUM Support Services for Employment - Churches United in Ministry
ECDV	2264	\$ 64,000	Growing Neighborhood Businesses - Northeast Entrepreneur Fund, Inc.
ECDV	1974	\$ 40,000	Futures Program - Life House

<u>ECDV</u>	<u>1291</u>	<u>\$ 32,000</u>	<u>Circles at Work - Community Action Duluth</u>
			<u>PUBLIC FACILITY IMPROVEMENT PROJECTS</u>
PFAC	PF04	\$ 250,000	UDAC Building Reformation
			<u>PUBLIC SERVICE PROJECTS</u>
PSVC	1244	\$ 72,000	Duluth Hunger Project - CHUM
PSVC	1929	\$ 61,685	Primary Health Care Services - Lake Superior Community Health Center
PSVC	1974	\$ 20,000	Basic Needs Center for Homeless Youth - Life House
PSVC	1226	\$ 26,000	Supportive Housing Programs - Center City
PSVC	2509	\$ 45,000	Battered Women's Shelter Program - Safe Haven Shelter/CHUM
PSVC	2511	\$ 12,000	Family Transitional Housing Program - Salvation Army
PSVC	1168	\$ 30,000	Feeding Kids Through Youth Programs - YMCA
PSVC	2109	\$ 15,000	Homeless and At-Risk Vets Stabilization/Outreach - MACV/CHUM
PSVC	1050	\$ 3,000	Transitional and Permanent Housing Services - AICHO
PSVC		\$ 54,000	Housing and Stabilization Services Fund
			<u>PLANNING/PROGRAM ADMINISTRATION</u>
ADMC	AD01	\$ 432,621	CDBG Program Administration
ADMC	AD02	\$ 20,000	Neighborhood Revitalization Planning

BE IT FURTHER RESOLVED, that the following are hereby designated as the financial resources for the above program:

SOURCE OF FUNDING

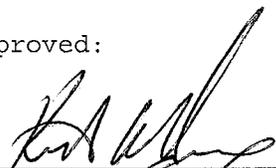
Year 2014	CDBG Grant - city	\$2,263,106
<hr/>		
Total		\$2,263,106

BE IT FURTHER RESOLVED, that the city of Duluth and its officials are authorized and directed to assume full responsibility for assuring that its

community development program is carried out in full compliance with the provisions of the acts implementing the programs and all regulations of HUD issued pursuant thereto. This authorization shall also apply to existing programs with the city and HUD under the HUD CDBG, HOME and ESG programs.

BE IT FURTHER RESOLVED, that the appropriate city officials are authorized to execute the appropriate agreements with these agencies upon receipt of HUD funds.

Approved:



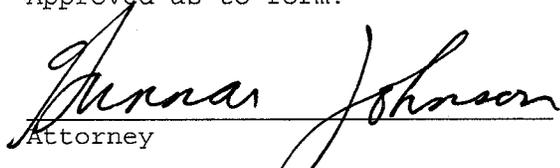
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

CD KH:cs 1/2/2014

STATEMENT OF PURPOSE: This resolution reflects comments from organizations and citizens as related to the fund for the Community Development Block Grant (CDBG). In addition to citizens, the Community Forums and the Community Development Committee (CD Committee) each played a role in the recommendations contained in this resolution. There was a 30-day public comment period from November 1- December 2, 2013, on the draft FY 2014 Annual Action Plan portion of the 2010-2014 Consolidated Plan, which includes recommended funding for the 2014 CDBG, HOME and ESG programs. The CD Committee held a public hearing on December 10, 2013 to hear comments on the funding recommendations and then modified the initial recommendations to reflect the comments and the final grant amounts. These recommendations were approved on December 10, 2013, with the concurrence of the Community Development Manager.

Source of Funds:

\$2,263,106 in new 2014 HUD CDBG Funds

The resolution, in addition to authorizing application for grant funds and administration of same when received, also takes the following actions:

- (a) Allocates funds by project for 2014 CDBG Program.
- (b) Authorizes contracts for the activities upon receipt of the funding contract and completion of the environmental review process. Housing contracts will include addendums that require affordability restrictions in accordance with HUD regulations.

HOUSING

14-HS-01

Project Name: Housing Resource Connection - Duluth Housing & Redevelopment Authority (HRA)/Fiscal Agent

Project Summary: The Housing Resource Connection will provide low interest and deferred loans for rehabilitation assistance to eligible homeowners and rental property owners within the city of Duluth. Homeowners can apply for up to \$20,000 in loans to address code deficiencies and lead paint hazards. Also, the Center will complete up to 11 acquisition-rehabs for homeownership. Rental owners can apply for a 2% interest loan to renovate their properties, which then must serve low to moderate income tenants.

Goal: 168 units (113 Single-family and 55 Rental Rehab)

Amount Recommended: \$917,800

ECONOMIC DEVELOPMENT

14-ED-01

Project Name: SOAR Career Solutions Duluth At Work (SOAR DAW) - SOAR Career Solutions

Project Summary: SOAR Career Solutions will provide job skills training, case management, job placement and job retention support to assist 16 Duluth residents at or below 50% of Area Median Income to obtain employment and maintain their jobs to increase their income by 25% over three years.

Goal: 16 Jobs

Amount Recommended: \$128,000

14-ED-02

Project Name: CHUM Support Services for Employment - CHUM

Project Summary: 9 LMI Individuals with limited or poor work histories will be assisted in finding entry level positions and provided supportive services, including case management, to successfully maintain their jobs while building a foundation for advancement and self-sufficiency. Participants will realize a 25% increase in income within 3 years.

Goal: 9 Jobs

Amount Recommended: \$72,000

14-ED-03

Project Name: Growing Neighborhood Businesses - Entrepreneur Fund

Project Summary: The Northeast Entrepreneur Fund's Growing Neighborhood Businesses program will provide technical assistance and peer support for 8 existing small business owners in Duluth Target Neighborhoods to help them grow their business revenue by at least 25% within 2 years.

Goal: 8 LMI neighborhood small business owners grow their business revenue by 25% within 2 years.

Amount Recommended: \$64,000

14-ED-04

Project Name: Duluth at Work for Homeless Youth - Life House

Project Summary: The Futures Program will assist five at-risk and/or homeless youth ages 16-20, from CDBG targeted neighborhoods, in becoming self-

sufficient through employment training, job placement, education, and other services which will lead to a 25% income increase over a three-year period.

Goal: 5 Jobs

Amount Recommended: \$40,000

PUBLIC FACILITY IMPROVEMENTS

14-PF-04

Project Name: Udac Building Reformation- Udac

Project Summary: The project would make improvements to the Udac Building, a nonprofit-owned facility located in the Central Hillside, CDBG Target Neighborhood. Improvements to the building will increase the accessibility and delivery of services to adults with disabilities.

Goal: 1 Facility

Amount Recommended: \$250,000

PUBLIC SERVICES

14-PS-01

Project Name: Duluth Hunger Project - Churches United in Ministry (CHUM)

Project Summary: The Duluth Hunger Project is a coalition of three agencies working together to prevent and alleviate chronic hunger and malnutrition among the lowest income of Duluth's residents, through congregate meal sites and emergency food shelf programs.

Goal: 12,000 people

Amount Recommended: \$72,000

14-PS-02

Project Name: Primary Health Care Services - Lake Superior Community Health Center

Project Summary: Support the provision of affordable, primary health care, including dental care, for uninsured and underinsured low and moderate income individuals and families in accessible locations within the City.

Goal: 6,300

Amount Recommended: \$61,685

14-PS-03

Project Name: Feeding Kids through Youth Programs - YMCA

Project Summary: This Collaborative of four agencies will provide nutritional meals during the time youth are participating in the youth development programs. This funding will provide the foods and services for the meal service.

Goal: 1,400

Amount Recommended: \$30,000

14-PS-04

Project Name: Basic Needs Center for Homeless Youth - Life House

Project Summary: Life House will assist 600 at-risk and/or homeless youth annually, ages 14-20, in Duluth, to address basic needs (food, clothing, shelter) and connect with on-site support services that help with stabilization.

Goal: 600 People

Amount Recommended: \$20,000

14-PS-05

Project Name: Duluth Shelter Project- Safe Haven

Project Summary: The CHUM Shelter includes a 44-bed congregate shelter for homeless single men and women and 4-units of emergency shelter for homeless families. Safe Haven Shelter is a 39-bed emergency shelter for women and their children who are fleeing domestic violence. Both shelters provide a variety of stabilization services, advocacy and support to the homeless persons in the shelters.

Goal: 1,500 People

Amount Recommended: \$45,000

14-PS-06

Project Name: Transitional and Permanent Housing Services Program - AICHO (American Indian Community Housing Organization)

Project Summary: AICHO will provide transitional housing and support services to assist homeless families and single women move toward greater housing stability.

Goal: 76

Amount Recommended: \$3,000

14-PS-07

Project Name: Homeless and At Risk Veterans Stabilization and Outreach- MACV-Duluth/CHUM

Project Summary: MN Assistance Council for Veterans (MACV) and CHUM will work together to provide outreach, referral, prevention and rapid rehousing services to veterans living on the streets and other places not meant for human habitation and to veterans leaving institutions or who may otherwise be at-risk of homelessness. CHUM's shelter, advocacy, outreach and chaplaincy staff will refer homeless and at-risk veterans to MACV, the regional experts in providing rapid re-housing and prevention assistance to homeless veterans and veterans at-risk of homelessness.

Goal: 80 People

Amount Recommended: \$15,000

14-PS-08

Project Name: Family Transitional Housing Program - Salvation Army

Project Summary: Salvation Army will provide transitional housing and support services to assist homeless families (100 persons) move toward greater housing stability.

Goal: 100

Amount Recommended: \$12,000

14-PS-09

Project Name: Supportive Housing Programs- Center City Housing Corporation

Project Summary: CCHC will operate and provide supportive services for 21 units of family transitional housing and Life House will provide support services to youth living in 5 units of transitional housing owned by CCHC. CDBG funds will be used to provide supportive services.

Goal: 182

Amount Recommended: \$26,000

Project Name: Housing and Stabilization Services Fund

Project Summary: Housing and Stabilization Services Fund-Benchmarks will be established for rapid re-housing and housing placement for homeless singles, families and youth exiting out of the CHUM congregate and family shelters, Safe Haven and Dabinool'gan DV Shelters, from transitional housing facilities in Duluth, including Center City Family Transitional Housing, American Indian Community Housing Organization Transitional Housing for Native American Women

& Women with Children, Salvation Army Family Transitional Housing, Life House Teen Transitional Housing and MN Assistance Council for Veterans Transitional Housing. Activities will be developed in coordination with the development of a Coordinated Assessment system for the St. Louis County Continuum of Care.
Amount Recommended: \$54,000

2014 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

**PUBLIC FACILITIES
PART I**

THIS AGREEMENT is entered into this ____ day of ____, 2014, by and between the City of Duluth, (the City), and _____. (the Agency).

WHEREAS, the City has received U. S. Department of Housing and Urban Development (HUD) funds under the Community Development Block Grant (CDBG) Program (CFDA 14.218); and

WHEREAS, the City established the _____ Project pursuant to Resolution _____, approved January 13, 2014; and

WHEREAS, the City desires to enter into an agreement for services to implement the above project; and

WHEREAS, the Agency is willing and able to provide said services.

NOW, THEREFORE, the City and the Agency do mutually agree as follows:

1. Work to be Performed

The Agency shall implement the "_____" (the Project) in accordance with the Scope of Services and the Project Budget attached hereto as Exhibit A and incorporated herein, and as outlined in the Agency's funding proposal entitled "_____ Project" dated _____, 2013, which is on file in the Office of the City's Community Development Division (the Division), and which is incorporated by reference and made a part of this Agreement as if fully set forth herein. The Agency shall operate the Project to provide _____ (The Approved Use).

Assistance under the Project shall be targeted to those individuals/families that meet the most current HUD regulations and guidelines for assistance to low- and moderate-income individuals. HUD, from time to time, updates its definition of a low- and moderate-income individual and the Agency shall use the most current definition when determining whether assistance shall be provided under the terms of this Agreement.

The Project shall be performed on property located at _____, Duluth, St. Louis County, Minnesota.

2. Documents to be Incorporated

The parties agree that the following documents, as may be amended from time to time, are incorporated by reference and made a part of this Agreement as if fully set forth herein:

- A. Agency's funding proposal entitled " _____ Project" dated _____, 2013;
- B. Scope of Services and Project Budget (Exhibit A). In the event of a conflict between Exhibit A and the above proposal, Exhibit A shall be deemed governing;
- C. 24 CFR Parts 84, 85, and 570;
- D. Federal Circulars A-87, A-102, A-110, A-122, and A-133;
- E. Part II - Supplementary General Conditions for federally and/or city assisted activities. In the event of a conflict between the terms and provisions of this Agreement and "Part II, Supplementary General Conditions," the terms and conditions of this Agreement shall be deemed to be governing;
- F. FY 2014 Annual Action Plan;
- G. City's Monitoring and Financial Policy.

3. Reimbursement of Expenses

For implementation of the Project under this Agreement, the City agrees to reimburse the Agency for "Eligible Costs" incurred by it in accordance with the Project Budget attached hereto as Exhibit A in an amount not to exceed _____ (\$_____). Any increase or decrease of an individual line item in the Project Budget must have the prior written approval of the Manager of the Division (Manager).

Independent audits are not deemed to be an eligible cost under this Agreement. All costs under this Agreement must be in conformance with the HUD regulations contained in 24 CFR Part 570 (the "Program"), including but not limited to 24CFR570.502, 24CFR570.503, and 24CFR570 Subpart K, which are hereby adopted by reference and deemed to be part of this Agreement. In addition, all costs under this Agreement must be in conformance with the appropriate Federal Office of Management and Budget (OMB) Circular listed below:

A-87, 24 CFR 85, A-102

-- Local Public Agencies

A-21
A-110, A-122, A-133, 24 CFR84

-- Educational Institutions
-- All Other Entities

Requests for reimbursement shall be made no more frequently than monthly and shall be made only for amounts over One Hundred Dollars (\$100.00). Requests for reimbursement shall be accompanied by such documentation as the City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly reimburse the Agency for the "Eligible Costs" up to the amount set forth above. Additionally, the City will not reimburse the Agency for any cost incurred for which a request for reimbursement is not received by the City within fifteen (15) days of the date of expiration of the term of this Agreement or its termination. All reimbursement payments shall be made out of the 2014 Federal Program Fund 262 - Community Development - 020 - Project Account No. _____.

4. Mortgage Lien

Immediately upon execution of this Agreement, the Agency agrees to execute a Mortgage Lien and Notice of Foreclosure (Mortgage Lien) in favor of the City. The Mortgage Lien shall be in a form approved by the City's Attorney. The amount of the Mortgage Lien shall be the greater of: 1) the full amount of the sum granted to the Agency above which is \$ _____; or 2) an amount equal to the fair market value at the time of sale of the Property or conversion to another use without the City's consent, less any portion of said value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the Property.

The Mortgage Lien imposed on the Property shall commence on the date first shown above and shall continue for ten (10) years after the date of issuance of the Certificate of Completion or ten (10) years after the date of the payment associated with one hundred percent (100%) completion of the CDBG-financed acquisition to the Property, whichever is later, unless the lien is terminated earlier as provided for herein.

Upon execution of the Mortgage Lien, the Agency agrees to record the Mortgage Lien in the office of the St. Louis County Recorder and to pay all costs associated therewith. Upon recording, the Agency shall immediately submit to the City an executed original of the Mortgage Lien showing the date and document numbers of record, or a duly certified copy of the filed original.

It is agreed between the parties that this Agreement and the Mortgage Lien imposed herein shall be deemed to run with the land and all of its provisions shall be enforceable by the parties' respective heirs and assigns. The Manager, on behalf of the City, may, in her or his sole discretion, decide to subordinate said Mortgage Lien to liens of other parties. Said consent of the Manager will be deemed valid only when reduced to writing.

5. Term

The term of this Agreement shall be deemed to have commenced on _____, 2014, the date of this Agreement notwithstanding, and shall continue through June 30, 2015 unless terminated earlier as provided for herein. Notwithstanding the above, the term of this Agreement may be extended for a period not to exceed twelve (12) months upon prior written approval of the Manager. Within fifteen (15) days following the expiration of the term of the Agreement, or its termination, the Agency's right to seek reimbursement shall cease and no further reimbursements may be made by City to the Agency under this Agreement. In the event the term of the Agreement or its termination falls on a holiday or a weekend, then the Agency shall submit documentation the following business day. Any unexpended balance remaining at the expiration of the term of the Agreement shall be reprogrammed. The term of the Agreement shall be in full force and effect for the full term of the Mortgage Lien.

6. Notice of Sale, Transfer or Change in Use

The agency agrees for itself and its successors and assigns that it will notify the City of any sale, transfer, or exchange of the Property, or the Project or any portion thereof or of any change in use of the Property to any us other than the Approved Use at least thirty (30) days prior to any such sale, transfer, exchange or change in use. The Agency further warrants that it will not demolish any part of the Project or substantially subtract from the Property or the Project and that in the event of damage to or destruction of any part thereof, the Agency will use its best efforts to repair and restore the renovations, additions and alterations to substantially the same condition as existed prior to the event causing the damage or destruction.

7. Insurance

The Agency shall provide for the purchase and maintenance of such insurance as will protect the City against risk of loss or damage to the Project or the Property during the term of this Agreement. Said insurance coverage shall name the City as an additional insured. Proof of said insurance shall be provided to the City upon commencement of this Agreement. Such policy of insurance shall be approved by the City Attorney and shall contain a provision that thirty (30) days' advance notice in writing shall be given to the City prior to termination, cancellation or modification of such insurance. In the event that an "Accord" form of certificate is used, the words "endeavor to" shall be stricken from the notice provisions thereof. Current ISO additional insured's endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

8. Maintenance of the Property

The Agency agrees to keep the Property in good condition and repair, in compliance with all applicable codes and requirements; to restore promptly and in good and workmanlike manner any part of the Property and the Project which may be damaged or destroyed and to pay all lawful taxes when due; to comply with all laws affecting said Property or requiring any alterations or improvements to be made thereon; not to commit or permit any waste thereof; not to commit, suffer or permit any action thereon in violation of law.

9. Project Completion

The Project shall be completed on or before June 30, 2015, unless terminated earlier as provided for herein. Notwithstanding the above, time for completion may be extended for a period not to exceed twelve (12) months upon prior written approval of the Manager.

10. General Conditions

This Agreement is subject to the provisions of "Part II, Supplementary General Conditions for Federally and/or City Assisted Activities" (the Supplementary General Conditions) which is on file in the office of the Division and incorporated by reference and made part of this Agreement as if fully set forth herein. In the event of a conflict between the terms and provisions of this Agreement and "Part II, Supplementary General Conditions," the terms and conditions of this Agreement shall be deemed to be governing.

11. Records and Inspections

A. Records

1. Establishment, Maintenance and Inspection of Records

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD or City 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. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

2. Source Documentation

The Agency shall ensure that all costs are supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly

identified and readily accessible.

B. Reports and Information Generally

The Agency shall be responsible for furnishing to HUD or the City such statements, records, data and information as HUD or the City may require pertaining to matters covered by this Agreement.

C. Additional Reports and Records

In addition to the requirements contained in the Supplementary General Conditions, the Agency agrees that it shall prepare and forward to the City such information as is required in order for the City to meet the requirements of HUD's grantee Consolidated Annual Performance and Evaluation Report. In addition, the Agency shall promptly furnish to the City any and all financial statements; financial reports; audits; and quarterly, semiannual or annual statements prepared by or on behalf of the Agency in the ordinary course of its business which relate, directly or indirectly, to the provision of services under the Project and this Agreement as soon as the same is developed by or on behalf of the Agency.

D. Audits and Inspections

The Agency shall ensure that at any time during normal business hours and as often as City, HUD, the Comptroller General of the United States, the Legislative Auditor and/or the State Auditor may deem necessary, there shall be made available to City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor for examination, all of its records with respect to all matters covered by this Agreement. The Agency will also permit City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

12. Independent Audit

The Agency shall submit to the City an A-133 audit within nine (9) months of the end of its fiscal year if the Agency expends \$750,000 or more from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year. If the Agency expends less than \$750,000 from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year, the Agency shall submit to the City a financial audit conducted in accordance with all effective auditing standards within nine (9)

months of the end of its fiscal year. The City may, in its sole discretion, suspend payment to the Agency under this Agreement or terminate this Agreement for cause for failure of the Agency to submit the appropriate audit above within said nine-month period.

13. Program Income

Program income as defined in 24 CFR 570.500(a) shall be reported and paid to the City upon its receipt in a form and time frame as determined by the Manager. Notwithstanding the above, program income may be retained when needed for cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section 108 security needs. Any program income on hand when this Agreement expires, or received after the expiration of this Agreement, shall be promptly paid to the City as required by 24 CFR 570.503(b)(8).

14. Property

The purchase of real or personal property is not an allowable cost under the provisions of this Agreement except that in the event said purchases are, at any time, allowed by the Manager, the provisions of 24 CFR 570.503(b)(8) entitled "Reversion of Assets" apply.

15. Independent Contractor and Indemnity

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting the Agency or any of its officers, agents, servants and employees as an officer, agent, servant, representative or employee of the City for any purpose or in any manner whatsoever. The Agency's officers, agents, servants and employees shall not be considered employees of the City, and any and all claims which may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said officers, agents, servants and employees while engaged in performing any work under this Agreement, and any and all claims whatsoever on behalf of said officers, agents, servants and employees arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of the City. The Agency's officers, agents, servants and employees shall not be entitled to any compensation or right or benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the Agency agrees to defend, indemnify and save harmless the City and its officers, agents, servants and employees from any and all claims, actions, demands, suits, expenses, losses, judgments, costs, expenses and damages, direct and indirect, incidental and consequential, including but not limited to attorneys' fees, asserted by any person(s) including agents or employees of the City or the Agency, arising out of or resulting from

any actual or alleged act or omission of the Agency, its officers, agents, servants or employees in connection with or relating to the performance of service under this Agreement. On ten (10) days' written notice from City, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

16. Termination and Remedies

A. Termination

The City may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The City may terminate this Agreement for cause upon written notice to the Agency specifying the cause for termination, any period for cure by the Agency, and the date of termination. In the event of termination, all property acquired with funds furnished by the City and finished or unfinished documents, data, studies and reports purchased or prepared by the Agency under this Agreement shall be disposed of in accordance with the City's directives and in accordance with applicable laws and regulations. The Agency shall be entitled to compensation for performance of any unreimbursed services satisfactorily performed under this Agreement prior to the termination date. Notwithstanding the above, the City may, after giving notice of termination for cause, withhold, without penalty or interest, any payment due under this or any other agreement between the Agency and the City, until there is a cure by the Agency, a waiver by the City, or the Agreement is terminated.

Further, the Agency shall not be relieved of the liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Agency, and the City may withhold any reimbursement to the Agency on this and other agreements between the Agency and the City for the purpose of set-off until such time as the exact amount of damages due the City from the Agency can be determined. For the purposes of this Agreement, cause shall include any of the following:

1. Failure, for any reason, of the Agency to fulfill its obligations under this Agreement in a timely and proper manner, including failure to comply in any respect with the Program, the Supplementary General Conditions, or any provision of this Agreement.
2. The making of any arrangement with or for the benefit of Agency's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Agency that it is bankrupt; or filing by the Agency of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the

Federal Bankruptcy Act against the Agency unless dismissed within forty-five (45) days.

3. Failure to submit independent financial audits as required pursuant to this Agreement.
4. Failure to submit complete programmatic reports on the dates set forth in herein.
5. Failure to file the Mortgage Lien required herein.
6. Submission by the Agency to the City of reports or requests for payment that are untimely, incorrect or incomplete in any material respect.
7. Ineffective or improper use of funds provided under this Agreement.
8. Suspension or termination by HUD of the CDBG grant to the City pursuant to which this Agreement is funded.
9. Suspension or termination by HUD of the CDBG grant to the City under which this Agreement is funded.
10. No activity under this Agreement, either programmatically or payments made, for six (6) months after the commencement of this Agreement.
11. Noncompliance with all laws, ordinances, rules, regulations, Executive Orders, directives and codes of the United States of America, State of Minnesota and the City and their respective agencies which are now or later become applicable to its activities under this Agreement, including, but not limited to, all applicable regulations of HUD.
12. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.
13. Failure to complete all work on the Project as provided for herein.
14. The abandonment of the property by the Agency or the conversion of the property to any use other than that provided for herein.

15. Failure to file Mortgage Liens or the Certificate of Completion as provided for herein.

B. City's Rights Upon Termination for Cause

In the event of termination for cause, City shall have the right to avail itself of the following remedies; said remedies shall not be deemed to be mutually exclusive:

1. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.
2. Seek injunctive relief to enforce the terms and conditions of this Agreement.
3. Seek such other relief as may be available to City at law or in equity.
4. Foreclosure or enforce the lien imposed by this Agreement upon the properties in the full amount of the grant or loan given the property owner through the Agency under this Agreement.

C. Attorney's Fees

In the event that the Agreement is terminated for cause, City shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

D. Nonwaiver

Any forbearance by the City with respect to any of the terms and conditions of this Agreement in no way constitutes a waiver of City's rights or privileges granted hereunder.

17. Subcontractors

The Agency represents that it will utilize only its own personnel in the performance of services under this Agreement. The Agency shall not make any subcontract with any other party without the prior written consent of the Manager. Consent by the Manager to subcontract, assign, or otherwise dispose of any portion of this Agreement shall not relieve the Agency of any of the responsibility for fulfillment of this Agreement.

18. Assignability

The Agency shall not assign any right or interest in this Agreement and shall not

transfer any interests in the same without the prior written consent of the Manager, provided, however, that claims for money due or to become due to the Agency from the City under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the City.

19. Debarment

The Agency shall provide a certification that no contractor or material suppliers providing labor or materials for the project nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation from any covered transaction.

20. Interests of Public Officials

No member or delegate to the Congress of the United States, the Minnesota Legislature, the Duluth City Council, and no other Federal, State or Local Official shall be admitted to any benefit to arise from this Agreement.

21. Nondiscrimination and Equal Opportunity

Agency hereby agrees that in the provision of the services described in the Project, it will comply with all nondiscrimination and equal opportunity requirements of 24 CFR part 5, 24 CFR 576.57, and the Minnesota Human Rights Act.

22. Covenant Against Contingent Fees

The Agency warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person any fee commission percentage, brokerage fee, gift or other consideration, contingent upon or resulting from the award or making

this Agreement. For breach of this warranty, the City shall have the right to annul this Agreement without liability.

23. Compliance with Laws

The Agency agrees to observe and comply with all laws, ordinances, rules, regulations, Executive Orders, directives and codes of the United States of America, State of Minnesota and the City and their respective agencies which are now or later become applicable to its activities under this Agreement, including, but not limited to, all applicable regulations of HUD.

24. Notices

Notices to the City provided for herein shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to the City at the Office of Community Development and Housing, Room 407 City Hall, Duluth, Minnesota 55802; and notices to the Agency if sent by regular United States Mail, postage prepaid, addressed to the Agency at _____, _____, Duluth, MN 55806, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

25. Drug and Alcohol Free Policy

Agency acknowledges that it is responsible to develop a policy designed to ensure that facilities with regard to which grant funds are expended are free from the illegal use, possession or distribution of drugs or alcohol by persons working at or using those facilities.

26. 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.

27. Waiver

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

28. 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.

29. HUD Funding Contingency

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

30. No Third-Party Rights

This Agreement is to be construed and understood solely as an Agreement between the Agency and the City and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the City and the Agency, may be waived at any time by mutual agreement between the City and the Agency.

31. Amendments

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

32. Entire Agreement

This Agreement, including all exhibits and documents incorporated by reference, constitutes the entire Agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

33. Authority to Execute Agreement

The Agency represents to the City that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of the Agency who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of the Agency on its behalf will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions hereof.

**2014 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
ECONOMIC DEVELOPMENT
PROJECT AGREEMENT**

THIS AGREEMENT is entered into this 1st day of April, 2014, by and between the City of Duluth, (the City), and _____(the Agency).

WHEREAS, the City has received U. S. Department of Housing and Urban Development (HUD) funds under the Community Development Block Grant (CDBG) Program (CFDA 14.218); and

WHEREAS, the primary objective of the CDBG Program is the development of viable urban communities, including decent housing and a suitable living environment and expanding economic opportunities principally for persons of low and moderate income; and

WHEREAS, the City established the _____ Project pursuant to Resolution _____ approved January 13, 2014; and

WHEREAS, the City desires to enter into an agreement for services to implement the above project, and the Agency is willing and able to provide said services.

NOW, THEREFORE, the City and Agency do mutually agree as follows:

1. Use of Grant Funds

The Agency shall implement the " _____ " (the Project) in accordance with the Scope of Services, Project Budget and reimbursement formula attached as Exhibit A and as outlined in the Agency's funding proposal on file in the City's Community Development Division (the Division). Assistance under the Project shall be targeted to those individuals/families meeting the most current HUD regulations and guidelines for assistance to low- and moderate-income individuals. The Agency shall use HUD's current income guidelines (Exhibit B) when determining whether assistance shall be provided under the terms of this Agreement. Documentation of income shall be the annual income as defined under Section 8 (Part 5) Housing Assistance Payment Program method as prescribed by HUD in 24C FR 570.609. Agency agrees that CDBG funds shall be only used to provide services to residents of the City of Duluth, Minnesota.

2. Documents to be Incorporated

The parties agree that the following documents, as may be amended from time to time, are incorporated by reference and made a part of this Agreement as if fully set forth herein:

- A. Agency's funding proposal entitled " _____ " dated, _____, 2013;
- B. Scope of Services and Project Budget (Exhibit A). In the event of a conflict between Exhibit A and the above proposal, Exhibit A shall be deemed governing.
- C. 24 CFR Parts 84, 85, and 570;
- D. Federal Circulars:
 - 2 CFR, Part 225 - for cost principles
 - A-102 - for administrative requirements
 - A-133 - for audit requirements
 - 2 CFR, Part 230 - for cost principles
 - 2 CFR, Part 215 - for administrative requirements
- E. City's Monitoring Policies

3. Reimbursement of Expenses

For implementation of the Project, the City agrees to reimburse the Agency for eligible costs incurred by it in accordance with the Budget in an amount not to exceed _____. Reimbursement under the provisions of this Agreement shall be limited to the line items shown in Exhibit A. Any increase or decrease of an individual line item in the Budget must have the prior written approval of the Manager. Additional budget lines may not be added after the Project has begun operation without prior written approval of the Manager.

Requests for reimbursement shall be made no more frequently than quarterly and shall be made only for amounts over One Hundred Dollars (\$100.00) in the format as shown in Exhibit C. Requests for reimbursement shall be accompanied by the programmatic report and only such documentation as the City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly reimburse the Agency for the eligible costs up to the amount set forth above. Requests containing insufficient documentation as determined by the City must be revised within fifteen (15) calendar days of notice by City to the Agency of said insufficiency or Agency forfeits the right to reimbursement of all items appearing in said request. In the event the latest date to request reimbursement falls on a holiday or a

weekend, then the Agency shall submit documentation the following business day. The City will not reimburse the Agency for any cost incurred for which a request for reimbursement is not received by the City within fifteen (15) days of the expiration date of this Agreement or its termination. The requirements of this paragraph may be waived by the Manager in writing. The City shall withhold reimbursements of costs if the Agency has not submitted programmatic reports which are approved by the Manager. No final payment shall be made pursuant to this Agreement until such time as the final programmatic report is submitted and approved by the Manager. At the expiration of the term or termination of the Agreement, all remaining funds associated with this Agreement shall be reprogrammed. All reimbursement payments shall be made out of the 2014 - Federal Program Fund 262 - Community Development - Agency 020 Object 5434 -Project Account No._____.

4. Term

The term of this Agreement shall be deemed to have commenced on April 1, 2014, the date of this Agreement notwithstanding, and shall continue through September 30, 2017, unless terminated earlier as provided for herein. Notwithstanding the above, the term of this Agreement may be extended for a period not to exceed twelve (12) months upon prior written approval of the Manager. Within fifteen (15) days following the expiration of the term of the Agreement, or its termination, the Agency's right to seek reimbursement shall cease and no further reimbursements shall be made by City to the Agency under this Agreement. In the event the term of the Agreement or its termination falls on a holiday or a weekend, then the Agency shall submit documentation the following business day. Any unexpended balance remaining at the expiration of the term of the Agreement shall be reprogrammed. No activity may begin before the environmental review clearance date.

5. Programmatic Reports

The Agency shall submit programmatic reports on a quarterly basis in the form as shown in Exhibit D. Quarterly programmatic reports must be submitted whether or not there is Project activity in a given quarter. Programmatic reports and requests for reimbursement shall be submitted to by the Manager on the following dates:

<u>Performance Period</u>	<u>Due Date</u>
June 30, 2014	July 15, 2014
September 30, 2014	October 15, 2014
December 31, 2015	January 15, 2015
March 31, 2015	April 15, 2015
June 30, 2015	July 15, 2015
September 30, 2015	October 15, 2015

December 31, 2015
March 30, 2016
June 30, 2016
September 30, 2016
December 31, 2016
March 30, 2017
June 30, 2017
September 30, 2017

January 15, 2016
April 15, 2016
July 15, 2016
October 15, 2016
January 15, 2017
April 15, 2017
July 15, 2017
October 15, 2017

In the event the due date to submit programmatic reports and requests for reimbursement falls on a holiday or a weekend, then the Agency shall submit documentation the following business day. A final programmatic report shall be submitted to the Manager within fifteen (15) days of the last Project activity.

No final payment shall be made pursuant to this Agreement until the final programmatic report is submitted and approved.

6. Records and Inspections

A. Records

1. Establishment, Maintenance and Inspection of Records

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD and/or City 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. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

2. Source Documentation

Any and all documentation relating to eligible costs paid by Agency for which a request for reimbursement is being made shall be clearly identified and readily accessible to authorized representatives of the City or HUD upon written notification by same to Agency. The Agency shall ensure that all eligible costs are supported by properly executed payrolls, time records, invoices, contracts, vouchers or other documentation evidencing in proper detail the nature and propriety of the charges.

3. Additional Reports and Records

The Agency shall be responsible for furnishing to HUD or the City

such statements, records, data and information as HUD, or the City may request pertaining to matters covered by this Agreement, including HUD's grantee Consolidated Annual Performance and Evaluation Report.

4. Audits and Inspections

The Agency shall ensure that at any time during normal business hours and as often as City, HUD, the Comptroller General of the United States, the Legislative Auditor and/or the State Auditor may deem necessary, there shall be made available to City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor for examination, all of its records with respect to all matters covered by this Agreement, including HUD's grantee Consolidated Annual Performance and Evaluation Report. The Agency will also permit City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

B. Independent Audit

The Agency shall submit to the City an A-133 audit within nine (9) months of the end of its fiscal year if the Agency expends \$750,000 or more from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year. If the Agency expends less than \$750,000 from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year, the Agency shall submit to the City a financial statement audit conducted in accordance with all effective auditing standards with the management letter within nine (9) months of the end of its fiscal year.

7. Program Income

Program income as defined in 24 CFR 570.500(a) shall be reported and paid to the City upon its receipt in a form and time frame as determined by the Manager. Notwithstanding the above, program income may be retained when needed for cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section 108 security needs.

Any program income on hand when this Agreement expires, or received after the expiration of this Agreement, shall be promptly paid to the City.

8. Property

The Agency agrees to comply with the provisions of 24 CFR 570.503(b)(8) entitled "Reversion of Assets." The purchase of any real or personal property under this Agreement is subject to the approval of the Manager. Said equipment purchase is subject to purchasing requirements under the applicable federal circular as referred to under Documents to be Incorporated, as well as biannual inventories, which must be performed until such time as Agency disposes of said equipment, which disposal requires prior written consent of the Manager.

9. Equipment Lien (Where applicable)

Immediately upon purchase of equipment utilizing funding under this Agreement (the Equipment), the Agency agrees to execute a UCC Financing Statement (Equipment Lien) covering the Equipment and naming the City as a Secured Party on the Equipment. Upon execution of the Equipment Lien, the Agency agrees to file/record the Equipment Lien in the Office of the Minnesota Secretary of State and/or St. Louis Recorder's Office as appropriate and to pay all costs associated therewith. Upon such filing/recording, the Agency shall immediately submit to the City evidence or confirmation of the same. The equipment lien may be subordinated to other liens upon the prior written approval of the Manager.

10. Independent Contractor and Indemnity

It is agreed that nothing contained herein is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto. The Agency's officers, agents, servants and employees shall not be considered employees of the City. Any and all claims which may or might arise on behalf of Agency's officers, agents, servants and employees while engaged in performing any work under this Agreement, or arising out of employment, including, without limitation, the Workers' Compensation Act of the State of Minnesota and claims of discrimination, shall in no way be the responsibility of the City. The Agency's officers, servants and employees shall not be entitled to any compensation or right of benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the Agency agrees to defend, indemnify and save harmless the City and its officers, agents, servants and employees from any and all claims, actions, demands, suits, losses, judgments, costs, expenses and damages, direct and indirect, incidental and consequential, including but not limited to attorneys' fees, asserted by any person(s) including agents or employees of the City or the Agency, arising out of or resulting from any actual or alleged act or omission of the Agency, its officers, agents, servants or employees in connection with or relating to the performance of service under

this Agreement. On ten (10) days' written notice from City, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

11. Special Obligations

The Agency, as owner of a Property where Project activities are to take place (the Property), shall have the obligation to use and operate the Property in conformance with this Agreement. Said obligations shall include, but not be limited to the following: In any materials made public with regard to the activity or the Project, the Agency agrees to include a reference to the assistance provided by City pursuant to this Agreement.

12. Termination and Remedies

A. Termination

The City may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The City may also terminate this Agreement for cause upon written notice to the Agency specifying the cause for termination, any period for cure by the Agency, and the date of termination. In the event of termination, all property acquired with funds furnished by the City and finished or unfinished documents, data, studies and reports purchased or prepared by the Agency under this Agreement shall be disposed of in accordance with the City's directives and in accordance with applicable laws and regulations. The Agency shall be entitled to compensation for performance of any unreimbursed services satisfactorily performed under this Agreement prior to the termination date. Notwithstanding the above, the City may, after giving notice of termination for cause, withhold, without penalty or interest, any payment due under this or any other agreement between the Agency and the City, until there is a cure by the Agency, a waiver by the City, or the Agreement is terminated.

Further, the Agency shall not be relieved of the liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Agency, and the City may withhold any reimbursement to the Agency on this and other agreements between the Agency and the City for the purpose of set-off until such time as the exact amount of damages due the City from the Agency can be determined. For the purposes of this Agreement, cause shall include any of the following:

1. Failure, for any reason, of the Agency to fulfill its obligations under this Agreement, or any other agreement between the Agency and the City, in a timely and proper manner, including failure to comply in any respect with the Program, the Supplementary General Conditions, or any provision of this Agreement.
2. Failure to submit independent financial audits as required pursuant to this Agreement.
3. Failure to submit complete programmatic reports on the dates set forth herein.
4. Submission by the Agency to the City of reports or requests for payment that are untimely, incorrect or incomplete in any material respect.
5. Ineffective or improper use of funds provided under this Agreement.
6. Suspension or termination by HUD of the CDBG grant to the City under which this Agreement is funded.
7. No activity under this Agreement, either programmatically or

payments made, for six (6) months after the commencement of this Agreement.

8. Noncompliance with all laws, ordinances, rules, regulations, Executive Orders, directives and codes of the United States of America, State of Minnesota and the City and their respective agencies which are now or later become applicable to its activities under this Agreement, including, but not limited to, all applicable regulations of HUD.
9. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.
10. The making of any arrangement with or for the benefit of Agency's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Agency that it is bankrupt; or filing by the Agency of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Agency unless dismissed within forty-five (45) days.

B. City's Rights Upon Termination for Cause

In the event of termination for cause, City shall have the right to avail itself of the following remedies; said remedies shall not be deemed to be mutually exclusive:

1. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.
2. Enforce the liens imposed by this Agreement upon the Equipment in the full amount of the grant given to Agency under this Agreement.
3. Seek injunctive relief to enforce the terms and conditions of this Agreement.
4. Seek such other relief as may be available to City at law or in equity.

C. Attorneys' Fee

In the event that Agency is in default of the terms and conditions of this Agreement as herein defined, City shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

D. Nonwaiver

Any forbearance by the City with respect to any of the terms and conditions of this Agreement in no way constitutes a waiver of City's rights or privileges granted hereunder.

13. Subcontractors

The Agency represents that it will utilize only its own personnel in the performance of services under this Agreement. The Agency shall not make any subcontract with any other party without the prior written consent of the Manager. Consent by the Manager to subcontract, assign, or otherwise dispose of any portion of this Agreement shall not relieve the Agency of any of the responsibility for fulfillment of this Agreement.

14. Assignability

The Agency shall not assign any right or interest in this Agreement and shall not transfer any interests in the same without the prior written consent of the Manager, provided, however, that claims for money due or to become due to the Agency from the City under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the City.

15. Covenant Against Contingent Fees

The Agency warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person any fee commission percentage, brokerage fee, gift or other consideration, contingent upon or resulting from the award or making this Agreement. For breach of this warranty, the City shall have the right to annul this Agreement without liability.

16. Interests of Public Officials

No public official shall receive any benefit under this contract, including members or delegates of the Congress of the United States (Congress), the Minnesota Legislature, the Duluth City Council, or other federal, state or local official. The Agency shall comply with the Federal and local Conflict of Interest policy.

17. Notices

Notices to the City provided for herein shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to the City at the Community Development Division, Room 407 City Hall, Duluth, Minnesota 55802; and notices to the Agency if sent by regular United States Mail, postage prepaid, addressed to the Agency at _____, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

18. Nondiscrimination and Equal Opportunity

The Agency hereby agrees that in the provision of the services described in the Project, it will comply with all nondiscrimination and equal opportunity requirements of 24 CFR Part 5, 24 CFR 576.57, and the Minnesota Human Rights Act.

19. Drug and Alcohol Free Policy

The Agency acknowledges that it is responsible for the development and enforcement of a policy designed to ensure that Agency facilities, with regard to which CDBG funds are expended, are free from the illegal use, possession or distribution of drugs or alcohol by persons working at or using those facilities.

20. 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.

21. Waiver

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

22. 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.

23. No Third-Party Rights

This Agreement is to be construed and understood solely as an Agreement between the Agency and the City and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third-party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the City and the Agency, may be waived at any time by mutual agreement between the City and the Agency.

24. Amendments

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

25. Entire Agreement

This Agreement, including all exhibits and documents incorporated by reference, constitutes the entire Agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

26. Authority to Execute Agreement

The Agency represents to the City that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of the Agency who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of the Agency on its behalf will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions hereof.

**2014 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
PUBLIC SERVICE
PROJECT AGREEMENT**

THIS AGREEMENT is entered into this 1st day of April, 2014, by and between the City of Duluth, (the City), and _____ (the Agency).

WHEREAS, the City has received U. S. Department of Housing and Urban Development (HUD) funds under the Community Development Block Grant (CDBG) Program (CFDA 14.218); and

WHEREAS, the primary objective of the CDBG Program is the development of viable urban communities, including decent housing and a suitable living environment and expanding economic opportunities principally for persons of low and moderate income; and

WHEREAS, the City established the _____ Project pursuant to Resolution _____ approved January 13, 2014, and

WHEREAS, the City desires to enter into an agreement for services to implement the above project, and the Agency is willing and able to provide said services.

NOW, THEREFORE, the City and Agency do mutually agree as follows:

1. Use of Grant Funds

The Agency shall implement the " _____ " (the Project) in accordance with the Scope of Services, Project Budget and reimbursement formula attached as Exhibit A and as outlined in the Agency's funding proposal on file in the City's Community Development Division (the Division). Assistance under the Project shall be targeted to those individuals/families meeting the most current HUD regulations and guidelines for assistance to low- and moderate-income individuals. The Agency shall use HUD's current income guidelines (Exhibit B) when determining whether assistance shall be provided under the terms of this Agreement. Documentation of income shall be the annual income as defined under Section 8 (Part 5) Housing Assistance Payment Program method as prescribed by HUD in 24C FR 570.609. Agency agrees that CDBG funds shall be only used to provide services to residents of the City of Duluth, Minnesota.

2. Documents to be Incorporated

The parties agree that the following documents, as may be amended from time to time, are incorporated by reference and made a part of this Agreement as if fully set forth herein:

- A. Agency's funding proposal entitled " _____ " dated, _____, 2013;
- B. Scope of Services and Project Budget (Exhibit A). In the event of a conflict between Exhibit A and the above proposal, Exhibit A shall be deemed governing.
- C. 24 CFR Parts 84, 85, and 570;
- D. Federal Circulars:
 - 2 CFR, Part 225 - for cost principles
 - A-102 - for administrative requirements
 - A-133 - for audit requirements
 - 2 CFR, Part 230 - for cost principles
 - 2 CFR, Part 215 - for administrative requirements
- E. City's Monitoring Policies

3. Reimbursement of Expenses

For implementation of the Project, the City agrees to reimburse the Agency for eligible costs incurred by it in accordance with the Budget in an amount not to exceed _____. Reimbursement under the provisions of this Agreement shall be limited to the line items shown in Exhibit A. Any increase or decrease of an individual line item in the Budget must have the prior written approval of the Manager. Additional budget lines may not be added after the Project has begun operation without prior written approval of the Manager.

Requests for reimbursement shall be made no more frequently than quarterly and shall be made only for amounts over One Hundred Dollars (\$100.00) in the format as shown in Exhibit C. Requests for reimbursement shall be accompanied by the programmatic report and only such documentation as the City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly reimburse the Agency for the eligible costs up to the amount set forth above. Requests containing insufficient documentation as determined by the City must be revised within fifteen (15) calendar days of notice by City to the Agency of said insufficiency or Agency forfeits the right to reimbursement of all items appearing in said request. In the event the latest date to request reimbursement falls on a holiday or a

weekend, then the Agency shall submit documentation the following business day. The City will not reimburse the Agency for any cost incurred for which a request for reimbursement is not received by the City within fifteen (15) days of the expiration date of this Agreement or its termination. The requirements of this paragraph may be waived by the Manager in writing. The City shall withhold reimbursements of costs if the Agency has not submitted programmatic reports which are approved by the Manager. No final payment shall be made pursuant to this Agreement until such time as the final programmatic report is submitted and approved by the Manager. At the expiration of the term or termination of the Agreement, all remaining funds associated with this Agreement shall be reprogrammed. All reimbursement payments shall be made out of the 2014 - Federal Program Fund 262 - Community Development - Agency 020 Object 5434 -Project Account No._____.

4. Term

The term of this Agreement shall be deemed to have commenced on April 1, 2014, the date of this Agreement notwithstanding, and shall continue through March 31, 2015, unless terminated earlier as provided for herein.

Notwithstanding the above, the term of this Agreement may be extended for a period not to exceed twelve (12) months upon prior written approval of the Manager. Within fifteen (15) days following the expiration of the term of the Agreement, or its termination, the Agency's right to seek reimbursement shall cease and no further reimbursements shall be made by City to the Agency under this Agreement. In the event the term of the Agreement or its termination falls on a holiday or a weekend, then the Agency shall submit documentation the following business day. Any unexpended balance remaining at the expiration of the term of the Agreement shall be reprogrammed. No activity may begin before the environmental review clearance date.

5. Programmatic Reports

The Agency shall submit programmatic reports on a quarterly basis in the form as shown in Exhibit D. Quarterly programmatic reports must be submitted whether or not there is Project activity in a given quarter. Programmatic reports and requests for reimbursement shall be submitted to by the Manager on the following dates:

<u>Performance Period</u>	<u>Due Date</u>
June 30, 2014	July 15, 2014
September 30, 2014	October 15, 2014
December 31, 2015	January 15, 2015
March 31, 2015	April 15, 2015

In the event the due date to submit programmatic reports and requests for

reimbursement falls on a holiday or a weekend, then the Agency shall submit documentation the following business day. A final programmatic report shall be submitted to the Manager within fifteen (15) days of the last Project activity.

No final payment shall be made pursuant to this Agreement until the final programmatic report is submitted and approved.

6. Records and Inspections

A. Records

1. Establishment, Maintenance and Inspection of Records

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD and/or City 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. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

2. Source Documentation

Any and all documentation relating to eligible costs paid by Agency for which a request for reimbursement is being made shall be clearly identified and readily accessible to authorized representatives of the City or HUD upon written notification by same to Agency. The Agency shall ensure that all eligible costs are supported by properly executed payrolls, time records, invoices, contracts, vouchers or other documentation evidencing in proper detail the nature and propriety of the charges.

3. Additional Reports and Records

The Agency shall be responsible for furnishing to HUD or the City such statements, records, data and information as HUD, or the City may request pertaining to matters covered by this Agreement, including HUD's grantee Consolidated Annual Performance and Evaluation Report.

4. Audits and Inspections

The Agency shall ensure that at any time during normal business

hours and as often as City, HUD, the Comptroller General of the United States, the Legislative Auditor and/or the State Auditor may deem necessary, there shall be made available to City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor for examination, all of its records with respect to all matters covered by this Agreement, including HUD's grantee Consolidated Annual Performance and Evaluation Report. The Agency will also permit City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

B. Independent Audit

The Agency shall submit to the City an A-133 audit within nine (9) months of the end of its fiscal year if the Agency expends \$750,000 or more from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year. If the Agency expends less than \$750,000 from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year, the Agency shall submit to the City a financial statement audit conducted in accordance with all effective auditing standards with the management letter within nine (9) months of the end of its fiscal year.

7. Program Income

Program income as defined in 24 CFR 570.500(a) shall be reported and paid to the City upon its receipt in a form and time frame as determined by the Manager. Notwithstanding the above, program income may be retained when needed for cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section 108 security needs.

Any program income on hand when this Agreement expires, or received after the expiration of this Agreement, shall be promptly paid to the City.

8. Property

The Agency agrees to comply with the provisions of 24 CFR 570.503(b)(8) entitled "Reversion of Assets." The purchase of any real or personal property under this Agreement is subject to the approval of the Manager. Said equipment purchase is subject to purchasing requirements under the applicable federal circular as referred to under Documents to be Incorporated, as well as biannual

inventories, which must be performed until such time as Agency disposes of said equipment, which disposal requires prior written consent of the Manager.

9. Equipment Lien (Where applicable)

Immediately upon purchase of equipment utilizing funding under this Agreement (the Equipment), the Agency agrees to execute a UCC Financing Statement (Equipment Lien) covering the Equipment and naming the City as a Secured Party on the Equipment. Upon execution of the Equipment Lien, the Agency agrees to file/record the Equipment Lien in the Office of the Minnesota Secretary of State and/or St. Louis Recorder's Office as appropriate and to pay all costs associated therewith. Upon such filing/recording, the Agency shall immediately submit to the City evidence or confirmation of the same. The equipment lien may be subordinated to other liens upon the prior written approval of the Manager.

10. Independent Contractor and Indemnity

It is agreed that nothing contained herein is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto. The Agency's officers, agents, servants and employees shall not be considered employees of the City. Any and all claims which may or might arise on behalf of Agency's officers, agents, servants and employees while engaged in performing any work under this Agreement, or arising out of employment, including, without limitation, the Workers' Compensation Act of the State of Minnesota and claims of discrimination, shall in no way be the responsibility of the City. The Agency's officers, servants and employees shall not be entitled to any compensation or right of benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the Agency agrees to defend, indemnify and save harmless the City and its officers, agents, servants and employees from any and all claims, actions, demands, suits, losses, judgments, costs, expenses and damages, direct and indirect, incidental and consequential, including but not limited to attorneys' fees, asserted by any person(s) including agents or employees of the City or the Agency, arising out of or resulting from any actual or alleged act or omission of the Agency, its officers, agents, servants or employees in connection with or relating to the performance of service under this Agreement. On ten (10) days' written notice from City, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

11. Special Obligations

The Agency, as owner of a Property where Project activities are to take place (the Property), shall have the obligation to use and operate the Property in conformance with this Agreement. Said obligations shall include, but not be limited to the following: In any materials made public with regard to the activity or the Project, the Agency agrees to include a reference to the assistance provided by City pursuant to this Agreement.

12. Termination and Remedies

A. Termination

The City may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The City may also terminate this Agreement for cause upon written notice to the Agency specifying the cause for termination, any period for cure by the Agency, and the date of termination. In the event of termination, all property acquired with funds furnished by the City and finished or unfinished documents, data, studies and reports purchased or prepared by the Agency under this Agreement shall be disposed of in accordance with the City's directives and in accordance with applicable laws and regulations. The Agency shall be entitled to compensation for performance of any unreimbursed services satisfactorily performed under this Agreement prior to the termination date. Notwithstanding the above, the City may, after giving notice of termination for cause, withhold, without penalty or interest, any payment

due under this or any other agreement between the Agency and the City, until there is a cure by the Agency, a waiver by the City, or the Agreement is terminated.

Further, the Agency shall not be relieved of the liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Agency, and the City may withhold any reimbursement to the Agency on this and other agreements between the Agency and the City for the purpose of set-off until such time as the exact amount of damages due the City from the Agency can be determined. For the purposes of this Agreement, cause shall include any of the following:

1. Failure, for any reason, of the Agency to fulfill its obligations under this Agreement, or any other agreement between the Agency and the City, in a timely and proper manner, including failure to comply in any respect with the Program, the Supplementary General Conditions, or any provision of this Agreement.
2. Failure to submit independent financial audits as required pursuant to this Agreement.
3. Failure to submit complete programmatic reports on the dates set forth herein.
4. Submission by the Agency to the City of reports or requests for payment that are untimely, incorrect or incomplete in any material respect.
5. Ineffective or improper use of funds provided under this Agreement.
6. Suspension or termination by HUD of the CDBG grant to the City under which this Agreement is funded.
7. No activity under this Agreement, either programmatically or payments made, for six (6) months after the commencement of this Agreement.
8. Noncompliance with all laws, ordinances, rules, regulations, Executive Orders, directives and codes of the United States of America, State of Minnesota and the City and their respective agencies which are now or later become applicable to its activities under this Agreement, including, but not limited to, all applicable regulations of HUD.
9. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.

10. The making of any arrangement with or for the benefit of Agency's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Agency that it is bankrupt; or filing by the Agency of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Agency unless dismissed within forty-five (45) days.

B. City's Rights Upon Termination for Cause

In the event of termination for cause, City shall have the right to avail itself of the following remedies; said remedies shall not be deemed to be mutually exclusive:

1. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.
2. Enforce the liens imposed by this Agreement upon the Equipment in the full amount of the grant given to Agency under this Agreement.
3. Seek injunctive relief to enforce the terms and conditions of this Agreement.
4. Seek such other relief as may be available to City at law or in equity.

C. Attorneys' Fee

In the event that Agency is in default of the terms and conditions of this Agreement as herein defined, City shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

D. Nonwaiver

Any forbearance by the City with respect to any of the terms and conditions of this Agreement in no way constitutes a waiver of City's rights or privileges granted hereunder.

13. Subcontractors

The Agency represents that it will utilize only its own personnel in the performance of services under this Agreement. The Agency shall not make any subcontract with any other party without the prior written consent of the Manager. Consent by the Manager to subcontract, assign, or otherwise dispose of any portion of this Agreement shall not relieve the Agency of any of the responsibility for fulfillment of this Agreement.

14. Assignability

The Agency shall not assign any right or interest in this Agreement and shall not transfer any interests in the same without the prior written consent of the Manager, provided, however, that claims for money due or to become due to the Agency from the City under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the City.

15. Covenant Against Contingent Fees

The Agency warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person any fee commission percentage, brokerage fee, gift or other consideration, contingent upon or resulting from the award or making this Agreement. For breach of this warranty, the City shall have the right to annul this Agreement without liability.

16. Interests of Public Officials

No public official shall receive any benefit under this contract, including members or delegates of the Congress of the United States (Congress), the Minnesota Legislature, the Duluth City Council, or other federal, state or local official. The Agency shall comply with the Federal and local Conflict of Interest policy.

17. Notices

Notices to the City provided for herein shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to the City at the Community Development Division, Room 407 City Hall, Duluth, Minnesota 55802; and notices to the Agency if sent by regular United States Mail, postage prepaid, addressed to the Agency at _____, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

18. Nondiscrimination and Equal Opportunity

The Agency hereby agrees that in the provision of the services described in the Project, it will comply with all nondiscrimination and equal opportunity requirements of 24 CFR Part 5, 24 CFR 576.57, and the Minnesota Human Rights Act.

19. Drug and Alcohol Free Policy

The Agency acknowledges that it is responsible for the development and enforcement of a policy designed to ensure that Agency facilities, with regard to which CDBG funds are expended, are free from the illegal use, possession or distribution of drugs or alcohol by persons working at or using those facilities.

20. 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.

21. Waiver

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

22. 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.

23. No Third-Party Rights

This Agreement is to be construed and understood solely as an Agreement between the Agency and the City and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third-party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the City and the Agency, may be waived at any time by mutual agreement between the City and the Agency.

24. Amendments

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

25. Entire Agreement

This Agreement, including all exhibits and documents incorporated by reference, constitutes the entire Agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

26. Authority to Execute Agreement

The Agency represents to the City that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of the Agency who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of the Agency on its behalf will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions hereof.

20__ COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
(Housing) PROJECT AGREEMENT
(Agency Name)

THIS AGREEMENT is entered into this ____ day of _____, by and between the City of Duluth, (the City), and _____ the (Agency).

WHEREAS, the City has received U. S. Department of Housing and Urban Development (HUD) funds under the Community Development Block Grant (CDBG) Program (CFDA 14.218); and

WHEREAS, the primary objective of the CDBG Program is the development of viable urban communities, including decent housing and a suitable living environment and expanding economic opportunities principally for persons of low and moderate income; and

WHEREAS, the City established the _____ Project pursuant to Resolution _____, _____, approved _____; and

WHEREAS, the City desires to enter into an agreement for services to implement the above project, and the Agency is willing and able to provide said services.

NOW, THEREFORE, the City and Agency do mutually agree as follows:

1. Use of Grant Funds

The Agency shall implement/administer the _____ Project (the Project) in accordance with the Scope of Services and the Project Budget attached as Exhibit A, and as outlined in the Agency's funding proposal on file in the City's Community Development Division (the Division). Assistance under the Project shall be targeted to those individuals/families meeting the most current HUD regulations and guidelines for assistance to low- and moderate-income individuals. The Agency shall use HUD's current income guidelines (Exhibit B) when determining whether assistance shall be provided under the terms of this Agreement. Documentation of income shall be the IRS Form 1040 method as prescribed by HUD in 24 CFR 570.609. Agency agrees that CDBG funds shall only be used to provide services to residents of the City of Duluth, Minnesota.

In the event a mortgage lien is executed by a property owner under the Project, upon execution of such mortgage lien, the Agency agrees to immediately record the mortgage lien with a Notice of Foreclosure in the office of the St. Louis County Recorder and pay all costs associated therewith. The Agency shall keep written reports regarding mortgage liens that have been recorded by the Agency pursuant to this Agreement. Subordination of any mortgage lien taken under the Project to a subsequent lien must be approved in writing by the Manager. The purchase of any real or personal property under this Agreement is subject to the approval of the Manager. Any equipment purchase is subject to purchasing requirements under the applicable federal circular as referred to under Documents to be Incorporated, as well as biannual inventories, which must be performed until such time as Agency disposes of said equipment, which disposal requires prior written consent of the Manager.

2. Documents to be Incorporated

The parties agree that the following documents, as may be amended from time to time, are incorporated by reference and made a part of this Agreement as if fully set forth herein:

- A. Agency's funding proposal entitled " _____," dated _____;
- B. Scope of Services and Project Budget (Exhibit A). In the event of a conflict between Exhibit A and the above proposal, Exhibit A shall be deemed governing.
- C. 24 CFR Parts 84, 85, and 570;
- D. Federal Circulars:
 - 2 CFR, Part 225 - for cost principles
 - A-102 - for administrative requirements
 - A-133 - for audit requirements
 - 2 CFR, Part 230 - for cost principles
 - 2 CFR, Part 215 - for administrative requirements
- E. City's Monitoring and Financial Policy

3. Reimbursement of Expenses

For implementation of the Project, the City agrees to reimburse the Agency for eligible costs incurred by it in accordance with the Budget in an amount not to exceed _____ (\$\$\$\$). Reimbursement under the provisions of this Agreement shall be limited to the line items shown in Exhibit A. Any increase or decrease of an individual line item in the Budget must have the

prior written approval of the Manager and additional budget lines may not be added after the Project has begun operation without prior written approval of the Manager.

Requests for reimbursement shall be made no more frequently than twice per month and shall be made only for amounts over One Hundred Dollars (\$100.00) in the format as shown in Exhibit C. Requests for reimbursement shall be accompanied by such documentation as the City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly reimburse the Agency for the eligible costs up to the amount set forth above. Requests containing insufficient documentation as determined by the City must be revised within fifteen (15) calendar days of notice by City to the Agency of said insufficiency or Agency forfeits the right to reimbursement of all items appearing in said request.

In the event the latest date to request reimbursement falls on a holiday or a weekend, then the Agency shall submit the request and documentation the following business day. The City will not reimburse the Agency for any cost incurred for which a request for reimbursement is not received by the City within fifteen (15) days of the expiration date of this Agreement or its termination. The requirements of this paragraph may be waived by the Manager in writing. The City shall withhold reimbursements of costs if the Agency has not submitted programmatic reports which are approved by the Manager or if the Agency is not in compliance with the terms of any other Community Development agreement. No final payment shall be made pursuant to this Agreement until such time as the final programmatic report is submitted and approved by the Manager. All reimbursement payments shall be made out of the 2013 Federal Program Fund 262 - Community Development - Agency 020 – Object 5434 - Project Account No. _____.

4. Term

The term of this Agreement shall be deemed to have commenced on _____, the date of this Agreement notwithstanding, and shall continue through June 30, 2015, unless terminated earlier as provided for herein. Notwithstanding the above, the term of this Agreement may be extended for a period not to exceed twelve (12) months upon prior written approval of the Manager. Within fifteen (15) days following the expiration of the term of the Agreement, or its termination, the Agency's right to seek reimbursement shall cease and no further reimbursements may be made by City to the Agency under this Agreement. In the event the term of the Agreement or its termination falls on a holiday or a weekend, then the Agency shall submit documentation the following business day. Any unexpended balance remaining at the expiration of the term of the Agreement shall be reprogrammed. No activity may begin before the environmental review clearance date.

5. Programmatic Reports

The Agency shall submit statistical and narrative reports on a quarterly basis and at such time as a final request for reimbursement is submitted prior to the end of the contract term. All statistical and narrative reports shall be submitted in the form as shown in Exhibit D. Quarterly reports must be submitted throughout the term of this Agreement, whether or not activity occurs or funds are disbursed in a given quarter. Programmatic reports and requests for reimbursement shall be submitted to the Manager on the following dates:

<u>Performance Period</u>	<u>Due Date</u>
April 1-June 30, 2014	July 15, 2014
July 1-September 30, 2014	October 15, 2014
October 1-December 31, 2014	January 15, 2015
January 1-March 31, 2015	April 15, 2015
April 1-June 30, 2015	July 15, 2015

In the event the due date to submit programmatic reports and reimbursement requests falls on a holiday or a weekend, then the Agency shall submit reports the following business day. A programmatic report shall be submitted to the Manager within fifteen (15) days of the last Project activity.

No final payment shall be made pursuant to this Agreement until all final program reports have been submitted and approved. Should an Agency fail to submit final programmatic reports, any current and future Community Development contract activities shall be deemed inactive until such time as the final program reports are submitted by the Agency and approved by the Manager.

6. Records and Inspections

A. Records

1. Establishment, Maintenance and Inspection of Records

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD and/or City 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. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

2. Source Documentation

Any and all documentation relating to eligible costs paid by

Agency for which a request for reimbursement is being made shall be clearly identified and readily accessible to authorized representatives of the City or HUD upon written notification by same to Agency. The Agency shall ensure that all eligible costs are supported by properly executed payrolls, time records, invoices, contracts, vouchers or other documentation evidencing in proper detail the nature and propriety of the charges.

3. Additional Reports and Records

The Agency shall be responsible for furnishing to HUD or the City such statements, records, data and information as HUD or the City may request pertaining to matters covered by this Agreement, including HUD's grantee Consolidated Annual Performance and Evaluation Report.

4. Audits and Inspections

The Agency shall ensure that at any time during normal business hours and as often as City, HUD, the Comptroller General of the United States, the Legislative Auditor and/or the State Auditor may deem necessary, there shall be made available to City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor for examination, all of its records with respect to all matters covered by this Agreement, including HUD's grantee Consolidated Annual Performance and Evaluation Report.

The Agency will also permit City, HUD, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

B. Independent Audit

The Agency shall submit to the City an A-133 audit within nine (9) months of the end of its fiscal year if the Agency expends \$750,000 or more from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year. If the Agency expends less than \$750,000 from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year, the Agency shall submit to the City a financial statement audit conducted in accordance with all effective auditing standards, including the management letter, within nine (9) months of the end of its fiscal year.

7. Program Income

Program income as defined in 24 CFR 570.500(a) shall be reported and paid to the City upon its receipt in a form and time frame as determined by the Manager. Notwithstanding the above, program income may be retained when needed for cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section 108 security needs. Any program income on hand when this Agreement expires, or received after the expiration of this Agreement, shall be promptly paid to the City as required by 24 CFR 570.503(b)(8).

8. Special Obligations

The Agency, as owner of the Project and the Property, shall have the obligation to use and operate the Project in conformance with this Agreement and with the Program. Said obligations shall include, but not be limited to the following: In any materials made public with regard to the activity or the Project, the Agency agrees to include a reference to the assistance provided pursuant to this Agreement by City.

9. Affirmative Marketing

The Agency shall be required to demonstrate that it, or an agent acting on its behalf, has made good-faith efforts to attract eligible persons from all racial and ethnic groups to the Project during the term of this Agreement. Prior to any funds being reimbursed under this Agreement, the Agency shall submit, and have approved by the Manager, an Affirmative Marketing Plan.

10. Homebuyer Education Requirement

The Agency shall ensure that Recipients purchasing homes have completed an approved homebuyer educational program. Notwithstanding the above, said requirement may be waived for a particular recipient upon the prior written approval of the Manager.

11. Independent Contractor and Indemnity

It is agreed that nothing contained herein is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto. The Agency's officers, agents, servants and employees shall not be considered employees of the City. Any and all claims which may or might arise on behalf of Agency's officers, agents, servants and employees while engaged in performing any work under this Agreement, or arising out of employment, including, without limitation, the Workers' Compensation Act of the

State of Minnesota and claims of discrimination, shall in no way be the responsibility of the City. The Agency's officers, servants and employees shall not be entitled to any compensation or right of benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay from the City. Furthermore, the Agency agrees to defend, indemnify and save harmless the City and its officers, agents, servants and employees from any and all claims, actions, demands, suits, losses, judgments, costs, expenses and damages, direct and indirect, incidental and consequential, including but not limited to attorneys' fees, asserted by any person(s) including agents or employees of the City or the Agency, arising out of or resulting from any actual or alleged act or omission of the Agency, its officers, agents, servants or employees in connection with or relating to the performance of service under this Agreement. On ten (10) days' written notice from City, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

12. Termination and Remedies

A. Termination

The City may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The City may also terminate this Agreement for cause upon written notice to the Agency specifying the cause for termination, any period for cure by the Agency, and the date of termination. In the event of termination, all property acquired with funds furnished by the City and finished or unfinished documents, data, studies and reports purchased or prepared by the Agency under this Agreement shall be disposed of in accordance with the City's directives and in accordance with applicable laws and regulations. The Agency shall be entitled to compensation for performance of any unreimbursed services satisfactorily performed under this Agreement prior to the termination date. Notwithstanding the above, the City may, after giving notice of termination for cause, withhold, without penalty or interest, any payment due under this or any other agreement between the Agency and the City, until there is a cure by the Agency, a waiver by the City, or the Agreement is terminated.

Further, the Agency shall not be relieved of the liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Agency, and the City may withhold any reimbursement to the Agency on this and other agreements between the Agency and the City for the purpose of set-off until such time as the exact amount of damages due the City from the Agency can be determined. For the purposes of this Agreement, cause shall include any of the following:

1. Failure, for any reason, of the Agency to fulfill any of its obligations under this Agreement, or any other agreement between the Agency and the City, in a timely and proper manner, including failure to comply in any respect with the Program, the Supplementary General Conditions, or any provision of this Agreement.
2. The making of any arrangement with or for the benefit of Agency's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Agency that it is bankrupt; or filing by the Agency of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Agency unless dismissed within forty-five (45) days.
3. Failure to submit complete programmatic reports on the dates set forth herein.
4. Submission by the Agency to the City of programmatic reports, audits or requests for payment that are untimely, incorrect or incomplete in any material respect.
5. Ineffective or improper use of funds provided under this Agreement.
6. Suspension or termination by HUD of the CDBG grant to the City under which this Agreement is funded.
7. No activity under this Agreement, either programmatically or payments made, for six (6) months after the commencement of this Agreement.
8. Noncompliance with all laws, ordinances, rules, regulations, Executive Orders, directives and codes of the United States of America, State of Minnesota and the City and their respective agencies which are now or later become applicable to its activities under this Agreement, including, but not limited to, all applicable regulations of HUD.
9. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.
10. Failure to complete all work on the Project as provided for herein.
11. The abandonment of the property by the Agency or the conversion

of the property to any use other than that provided for herein.

12. Failure to file Mortgage Liens or Notices of Foreclosure provided for herein.

B. City's Rights Upon Termination for Cause

In the event of termination for cause, City shall have the right to avail itself of the following remedies; said remedies shall not be deemed to be mutually exclusive:

1. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.
2. Seek injunctive relief to enforce the terms and conditions of this Agreement.
3. Seek such other relief as may be available to City at law or in equity.
4. Foreclosure or enforce the lien imposed by this Agreement upon the properties in the full amount of the grant or loan given the property owner through the Agency under this Agreement.

C. Attorneys' Fees

In the event that the Agreement is terminated for cause, City shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

D. Nonwaiver

Any forbearance by the City with respect to any of the terms and conditions of this Agreement in no way constitutes a waiver of City's rights or privileges granted hereunder.

13. Subcontractors

The Agency represents that it will utilize only its own personnel in the performance of services under this Agreement. The Agency shall not make any subcontract with any other party without the prior written consent of the Manager. Consent by the Manager to subcontract, assign, or otherwise dispose of any portion of this Agreement shall not relieve the Agency of any of the responsibility for fulfillment of this Agreement.

14. Assignability

The Agency shall not assign any right or interest in this Agreement and shall not transfer any interests in the same without the prior written consent of the Manager, provided, however, that claims for money due or to become due to the Agency from the City under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the City.

15. Debarment

The Agency shall provide a certification that no contractor or material suppliers providing labor or materials for the Project nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation from any covered transaction.

16. Covenant Against Contingent Fees

The Agency warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person any fee commission percentage, brokerage fee, gift or other consideration, contingent upon or resulting from the award or making this Agreement. For breach of this warranty, the City shall have the right to annul this Agreement without liability.

17. Interests of Public Officials

No public official shall receive any benefit under this contract, including members or delegates of the Congress of the United States (Congress), the Minnesota Legislature, the Duluth City Council, or other federal, state or local official. The Agency shall comply with the Federal and local Conflict of Interest policy.

18. Notices

Notices to the City provided for herein shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to the City at the Community Development Division, Room 407 City Hall, Duluth, Minnesota 55802; and notices to the Agency if sent by regular United States Mail, postage prepaid, addressed to the Agency at; _____, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

19. Nondiscrimination and Equal Opportunity

Agency hereby agrees that in the provision of the services described in the Project, it will comply with all nondiscrimination and equal opportunity requirements of 24 CFR Part 5, 24 CFR 576.57, and the Minnesota Human Rights Act.

20. Drug and Alcohol Free Policy

Agency acknowledges that it is responsible to develop a policy designed to ensure that facilities with regard to which grant funds are expended are free from the illegal use, possession or distribution of drugs or alcohol by persons working at or using those facilities.

21. 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.

22. Waiver

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

23. 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.

24. No Third-Party Rights

This Agreement is to be construed and understood solely as an Agreement between the Agency and the City and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third-party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the City and the Agency, may be waived at any time by mutual agreement between the City and the Agency.

25. Amendments

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

26. Entire Agreement

This Agreement, including all exhibits and documents incorporated by reference, constitutes the entire Agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

27. Authority to Execute Agreement

The Agency represents to the City that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of the Agency who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of the Agency on its behalf will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions hereof.

