

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0031R

REPLACEMENT

RESOLUTION AUTHORIZING A REQUEST FOR HUD HOME FUNDS
FOR THE 2014 PROGRAM YEAR AND AUTHORIZING CONTRACTS.

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 HOME PROGRAM - FUND 260, AGENCY 020, OBJECT 5434, PROJECT CD14HM

<u>SUB PROJECT</u>	<u>ACTIVITY</u>	<u>PROJECTS</u>	<u>AMOUNT</u>
GN14	1736	Homeless Rental Asst. Program (TBRA)- HRA	\$ 123,000
GN14	1737	TBRA Admin - HRA	\$ 7,000
GN14	1738	Housing Rehab - Housing Resource Connection - HRA	\$ 222,243
CH14	6905	Housing Predevelopment - One Roof	\$ 20,000
CH14	6906	Rehab - Resale - One Roof	\$ 90,000
GN14	AD03	Program Administration (City)	\$ 43,583
Total			\$ 505,826

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

Year 2014

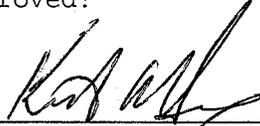
HOME Grant

\$ 505,826

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 approval of HUD funds.

Approved:



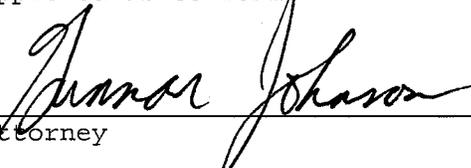
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form



Attorney

Approved:



Auditor

CD KH:cs 1/3/2014

STATEMENT OF PURPOSE: This resolution reflects comments from organizations and citizens as related to the fund for the HOME Investment Partnerships Program (HOME). 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:

\$505,826 in new 2014 HUD HOME 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 HOME Program.
- (b) Authorizes contracts for the activities upon receipt of the funding contract and completion of the environmental review process.

14-HM-01

Project Name: Homeless Rental Assistance Program - Duluth HRA

Project Summary: The program will provide rental assistance for households who would otherwise be homeless or are homeless by HUD's definition. The City and the HRA have established this program to provide rental assistance as a significant component in the continuum of services to prevent homelessness. Note that the City does not accept applications for this program; interested persons should contact the HRA at (218) 529-6300.

Goal: 18 homeless families to be served

Amount Recommended: \$123,000

14-CD-01

Project Name: Housing Predevelopment - One Roof Community Housing

Project Summary: One Roof Community Housing will conduct predevelopment activities including housing development planning that will assist in implementing future housing projects.

Goal: 1 Organization

Amount Recommended: \$20,000

14-CH-01

Project Name: Rehab and Resale - One Roof

Project Summary: One Roof will create quality, permanently affordable home ownership opportunities for low income households through the rehab and resale of eight single family homes in the City of Duluth. Applications are taken at the HRC offices located at 12 East 4th Street, Duluth, MN 55802 or online at www.housingresourceconnection.org.

Goal: 3 Housing Units

Amount Recommended: \$90,000

14-HS-01

Project Name: Housing Resource Connection

Project Summary: HRC will provide low interest loans for the rehabilitation of owner-occupied and rental housing in Duluth. CDBG funds will be used for emergency rehabilitation work. The HOME funds will address code deficiencies and lead paint hazards. The HRA will serve as the fiscal agent for the HRC, which includes One Roof, Ecolibrium 3 and Arrowhead Economic Opportunity Agency. Applications are accepted at the HRC offices located at 12 East 4th Street, Duluth, MN 55802 or online at www.housingresourceconnection.org

Goal: 4 Housing Units

Amount Recommended: \$72,243

**20__ HOME PROGRAM
HOMEOWNER REHAB PROJECT AGREEMENT
(Agency)**

THIS GRANT AGREEMENT, entered into this _____ day of _____, 20__, by and between the City of Duluth, a HOME Program Participating Jurisdiction (PJ), and _____ (Agency).

WHEREAS, Agency has applied to the City for an allocation of HOME funds for the purpose of the below-described Project; and

WHEREAS, said funding has been approved by the PJ pursuant to Resolution xx-xxxxR approved _____, 20__.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, PJ does hereby grant to the Agency the sum of _____ (\$ _____) under the following terms and conditions:

1. Program Adopted

The HOME Program provisions contained in 24 CFR Part 92 (the Program) are hereby adopted by reference and deemed to be a part of this Agreement. All activities carried on by the Agency pursuant to this Agreement shall be deemed to be governed by the Program.

2. Project Description

It is hereby agreed between the parties that the funds granted to the Agency under this Agreement shall be used exclusively for the purpose of homeowner property rehabilitation (the Project) as stated in the attached Exhibit A and as authorized in the Program. Exhibit A shall include the amount of HOME funds and program(s) to be administered; the tasks to be performed as HOME activities and a schedule for completing these tasks; the number and type of housing units to be rehabbed; environmental review, lead-based paint treatment, Agency roles and responsibilities; maximum HOME subsidy amount; the terms of any homeowner rehab loan; a budget for each program; match requirements; and any additional Project elements specific to the implementation of the Project.

3. Term

The term of this Agreement shall commence on _____, 20__, the date of the signatures to this Agreement notwithstanding, and shall continue through _____, 20__, unless terminated earlier as provided for herein. Notwithstanding the above, the time for completing the Project and incurring eligible costs may be extended for a period of time not to exceed twelve (12)

months upon the prior written approval of the Manager of the Community Development Division (the Manager).

4. HOME Budget

The parties agree that the HOME funds granted to the Agency under this Agreement shall be used strictly in compliance with the budget shown in Exhibit A. To be eligible for reimbursement, costs shall conform in character to those shown in Exhibit A and shall not exceed the amounts set forth in said Exhibit A without the prior written approval of the Manager. All costs under this Agreement must be in conformance with the appropriate Federal Office of Management and Budget Circular listed below:

A-87, A-102, A-128 -- Local Public Agencies
A-122, A-133 -- All Other Entities

6. Integrated Disbursement and Information System (IDIS)

Upon commitment of HOME dollars to a housing unit, the Agency shall submit to the PJ a HOME Program Homeowner Set-up Report. Upon completion of each housing unit, the Agency will submit to the PJ a HOME Program Homeowner Completion Report and HOME Program Supplemental Information Report. PJ will promptly enter the data into the Integrated Disbursement and Information System (IDIS).

7. Mortgage Lien

In the event a mortgage lien is executed by a homeowner 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.

8. HOME Income Limits

Agency will determine that homeowners assisted with HOME funds have an annual income at or below 80% of the Duluth area median income. Annual household income will be determined utilizing the adjusted gross income as defined for purposes of reporting under Internal Revenue Service 1040 series for individual Federal annual income tax purposes.

9. Property Value Limits

The Agency will ensure for single family homes that are rehabilitated, the after

rehab value of the home will not exceed 95% of the Duluth area median purchase price. PJ determines the actual 95% of area median value limit in accordance with CFR 24 92.254(a)(2)(iii) for HOME assisted homeownership housing, as indicated in Exhibit A.

12. Religious Activities

The Agency shall not require homeowners to participate in inherently religious activities such as worship, religious instruction, or proselytizing. If Agency is a faith-based organization, Agency may carry out its mission related to religious beliefs, provided that HOME funds do not financially support inherently religious activities. It is acceptable for Agency's Board of Directors to be selected based on religious practice, as well as religious references in mission statements and other governing documents. Agency agrees to serve all eligible households without regard to religion, and shall not restrict HOME units to people of a particular religion or denomination. Eligibility for HOME assisted housing must not rely on the applicant's participation in religious activities or programs.

13. Rehabilitation Standards

The Agency warrants and agrees that upon completion of rehab, the unit will be in compliance with all housing maintenance codes, building and fire codes applicable to structures of its type in the City of Duluth Housing Code, Chapter 29A, as amended by Ordinance 9462, and with the PJ rehabilitation standards that conform with 24 CFR 92.251(b). If the HOME assisted housing unit was built prior to 1978, the Agency warrants and agrees that upon completion of the rehabilitation, the unit will meet the requirements of HUD's Lead Safe Housing Rule (24 CFR Part 35). All rehabilitation work to be funded under this Agreement shall be performed by a contractor or contractors selected pursuant to a competitive bidding process, or by employees of the Agency.

15. Displacement and Relocation Requirements

The Agency shall take all necessary steps possible to minimize displacement. If displacement cannot be avoided, Agency shall be required to demonstrate that it has complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as listed in Exhibit E. At PJ's request, Agency shall submit a written Relocation Plan for approval by the Manager.

16. Conflict of Interest

No person who is an employee, agent, consultant, officer, or elected official or appointed official of the City of Duluth, no member or delegation of the Congress of the United States, the Minnesota Legislature, the Duluth City Council, or any other Federal, State or local official shall benefit from this Agreement. No

employee, agent, consultant or officer of the Agency receiving HOME funds or persons who exercise or have exercised any functions or responsibilities with respect to HOME activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Furthermore, no employee, agent, consultant or officer of the Agency may occupy a HOME assisted housing unit.

17. Affirmative Marketing

If the Project includes five or more HOME assisted units, 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. The PJ reserves the right to annually review Agency's records documenting affirmative marketing actions, and Agency agrees to take any corrective actions PJ may require when affirmative marketing requirements are not met.

18. Repayment of HOME Funds

Program income as defined in 24 CFR 570.500(a) and any repayment or recapture of HOME funds shall be reported and remitted to PJ upon its receipt in a form and time frame as determined by the PJ. Any program income, repaid or recaptured HOME funds on hand when this Agreement expires, or received after the expiration of this Agreement, shall be remitted to PJ.

19. Fees

Agency is prohibited from charging servicing, origination, or other fees for the costs of administering the HOME funded program(s) except as permitted by CFR 24 92.214(b)(1).

20. Reimbursement of Project Costs

PJ agrees that it will reimburse the Agency for the costs of work conforming to those specified in Exhibit A which are eligible for reimbursement under the Program up to the full amount of the Agreement herein. The Agency shall only request disbursement of HOME funds when the funds are needed to pay eligible costs, and only in the amount needed for such costs. The Agency may apply to the PJ for such reimbursement not more frequently than monthly for expenses incurred in implementing Project, and only for amounts over One Hundred

Dollars (\$100.00). The Agency's draw requests shall be accompanied by such documentation as PJ shall deem reasonably necessary to determine that the Project has been completed to that level and that payments for materials and services rendered to the Project and the property are due and payable. Once the PJ determines that the draw request is payable and in conformance with the terms and conditions of this Agreement, PJ shall promptly pay the certified amount. PJ will not reimburse costs incurred on or prior to December 31 in any year if those expenses have not been included in a request for reimbursement which has been received by PJ prior to January 15 of the following year. In the event that January 15 falls on a holiday or a weekend, the Agency may submit the request the following business day. The above requirements may be waived by the Manager in writing. All sums payable under this Agreement shall be paid as follows: _____ (\$ _____) from 20____ HOME Program Fund 260, Agency 020, _____.

Notwithstanding the above, the PJ shall be under no obligation to reimburse the Agency for costs incurred in a property for which the environmental review process has not been satisfactorily completed, as determined in the sole discretion of the PJ.

Agency will retain in their files appropriately executed change orders signed by the Agency and contractor(s). Any change order that requires an increase or decrease in the amount of HOME funding in a housing unit will be subject to PJ review and approval to ensure adequate funds are available to reimburse costs and the costs and construction activities are necessary and reasonable.

The PJ may hold a retainage in an amount determined by the PJ of HOME funds. Retainage will be paid to the Agency when the rehabilitation of the HOME assisted housing is completed, the Agency certifies there are no liens or lienable debts that are outstanding with regard to the improvements to the unit; and the Agency submits a HOME completion report that is accepted by the PJ and entered into the IDIS system.

21. Other Project Requirements

The Agency shall comply with all applicable federal and state laws and regulations as described in 24 CFR Part 92, subpart H inclusive.

22. Reports and Records

The Agency shall be responsible for furnishing to HUD or the PJ such statements, records, data and information as HUD or the PJ may require pertaining to matters covered by this Agreement. In addition to the requirements contained in the Part II, "Supplementary General Conditions for Federally and/or City Assisted Activities," the Agency agrees that it shall prepare and forward to the PJ such information as is required in order for the PJ to meet the

requirements of HUD's grantee Consolidated Annual Performance and Evaluation Report. The Agency shall promptly furnish to the PJ any and all financial statements; financial reports; and audits 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 are developed by or on behalf of the Agency.

The Agency shall submit to the PJ 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 during the Agency's fiscal year, the Agency shall submit to the PJ a financial statement audit conducted in accordance with all effective auditing standards, including management letter, within nine (9) months of the end of its fiscal year.

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD or the PJ with respect to all matters covered by this Agreement. Except as otherwise authorized by HUD, such records shall be maintained by the Agency for a period of six (6) years after the expiration of the term of this Agreement and the affordability period. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

The Agency will ensure that all costs shall be 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, and these documents pertaining in whole or in part to the Project shall be treated as records by the Agency.

The Agency shall ensure that at any time during normal business hours and as often as the PJ, 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 the PJ, 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 the PJ, 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.

23. Enforcement Provisions

In order to ensure compliance with the terms and conditions of this Agreement, the Agency agrees that PJ and its agents and staff shall have the right to have access to the Project units and to inspect them at reasonable times and with

reasonable notice to the Agency.

The PJ may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The PJ 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. Notwithstanding the above, the PJ 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 PJ, until there is a cure by the Agency, a waiver by the PJ, or the Agreement is terminated.

Upon termination of this Agreement, all program funds on hand at the time of expiration and any accounts receivable attributable to the use of program funds shall revert to the PJ. In the event that the Agreement is terminated for cause, PJ shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

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

- A. Failure, for any reason, of the Agency to fulfill any of the terms or obligations under this Agreement, the Declaration of Restrictive Covenants, or any other agreement between the Agency and the PJ or City of Duluth, in a timely and proper manner.
- B. 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.
- C. Submission by the Agency to the PJ of reports, audits or requests for payment that are untimely, incorrect or incomplete in any material respect.
- D. Ineffective or improper use of funds provided under this Agreement.
- E. Suspension, termination, reduction or elimination by HUD or by the Congress of the United States of the grant to the PJ under which this Agreement is funded.

- F. Noncompliance with any laws, ordinances, rules, regulations, Executive Orders, directives or codes of the United States of America, State of Minnesota or the City of Duluth or their respective agencies which are now or later become applicable to its activities under this Agreement, including, but not limited to, any applicable regulations of HUD.
- G. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.
- H. Failure to record a mortgage lien as provided for herein.
- I. Beginning rehab activities prior to the environmental clearance date.
- J. Beginning rehab activities prior to PJ approval to proceed following subsidy layering review (if applicable).
- K. Beginning rehab activities prior to an inspection of the housing structure for compliance with housing codes and lead-based paint hazards (if applicable).

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

- L. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.
- M. Seek injunctive relief to enforce the terms and conditions of this Agreement.
- N. Seek such other relief as may be available to PJ at law or in equity.

24. Anti-Lobbying

Agency shall comply with the anti-lobbying legislation, ensuring that no federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Further, if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the

Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

25. Subcontractors/Assignability

The Agency shall not make any assignment of this Agreement or subcontract with any other party without the prior written consent of the Manager; provided, however, that claims for money due or to become due to the Agency from the PJ under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the PJ. The Manager hereby consents to the Agency subcontracting with subcontractor(s) selected pursuant to competitive bidding process who are performing the rehabilitation work. 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.

26. HOME Rental Projects On-Site Inspection Services

Agency agrees that it will, at the direction of and in cooperation with PJ's staff, provide on-site housing inspection services necessary to ensure ongoing compliance of HOME Program rental units with City of Duluth Housing code, in accordance with the attached Exhibit B.

27. Environmental Review

PJ is the responsible entity regarding environmental review utilizing a tiered evaluation process for environmental assessment of housing activities. Agency will assist the PJ with this responsibility by documenting detailed site and housing structure specific information related to flood plain zone location, historic preservation in accordance with PJ's programmatic agreement, and wetland delineation. If a project is located in a flood plain or wetland, or requires State Historic Preservation Office review under the programmatic agreement, Agency will submit detailed site and housing structure information and proposed rehab activities to PJ. Rehab activities involving physical intervention on a housing structure are prohibited prior to PJ's determination of compliance with environmental review requirements.

28. 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.

29. Publicity Requirements

In any materials made public with regard to the Project, the Agency agrees to include a reference to the assistance provided pursuant to this Agreement by PJ.

30. Independent Contractor

The Agency's employees and agents will not be considered PJ employees. Agency certifies that it is in compliance with Minnesota Statute 176.181 Subd. 2, pertaining to worker's compensation insurance coverage and benefits. Any claims that may arise under the Minnesota Worker's Compensation Act on behalf of Agency's employees and any claims made by any third party as a consequence of any act or omission on the part of Agency's employees are in no way the PJ's obligation or responsibility.

31. Liability

Agency agrees to indemnify and save and hold PJ, its agents and employees harmless from any and all claims or causes of action arising from the performance of the Agreement by Agency or Agency's agents or employees.

32. Notices

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

33. 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. Annual Action Plan
- B. City's Monitoring and Financial Policy

34. Waiver

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

35. 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.

36. Subsidy Layering

For a housing project which utilizes other public funds in addition to HOME funds, the Agency will submit to PJ prior to the start of rehab activities a list of all sources and amounts committed to the project. PJ will provide Agency approval to proceed with the rehab project once PJ has completed a subsidy layering review and determined the amount of HOME funds invested in the project is no more than necessary to provide quality, financially viable affordable housing.

37. HUD Funding Contingency

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

38. Entire Agreement

This Agreement, including all exhibits and all 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.

39. Authorization to Execute Agreement

The Agency represents to the PJ 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 will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions thereof.

20__ HOME PROGRAM
CHDO DEVELOPMENT AND OPERATING GRANT AGREEMENT
(CHDO name) (____)

THIS GRANT AGREEMENT, entered into this ____ day of April, 20__, by and between the City of Duluth, a HOME Program Participating Jurisdiction (PJ), and _____ (____), which has been certified by the PJ as a Community Development Housing Organization (CHDO).

WHEREAS, CHDO has applied to PJ for an allocation of HOME Funds for the purpose of assisting it in development and operation of low-income housing facilities; and

WHEREAS, said funding has been approved by the PJ, pursuant to Resolution No. 0x-xxxxR, approved _____, 20__.

NOW, THEREFORE, in consideration of mutual covenants and conditions hereinafter contained, City does hereby grant to the Agency the sum of _____ (\$_____) under the following terms and conditions:

1. Program Adopted

The HOME Program provisions contained in 24 CFR Part 92 (the Program) are hereby adopted by reference and deemed to be a part of this Agreement. All activities carried on by CHDO pursuant to this Agreement shall be governed by the Program.

2. Project Description

All funds granted to CHDO under this Agreement shall be used exclusively for operating expenses related to pre-development activities as listed in 24 CFR Part 92.504(c)(6). Additionally, to be eligible for reimbursement, said activities shall conform in character to those shown on Exhibit A attached hereto and made a part hereof and shall not exceed the amounts set forth in said Exhibit A for each benchmark as described thereon without the prior written approval of the Manager of Community Development (the Manager). Any supplies and equipment to be purchased under this Agreement shall be purchased from a supplier or suppliers selected pursuant to sealed bids if required by the Program.

All costs under this Agreement must be in conformance with the Program. All costs under this Agreement must be in conformance with the appropriate Federal Office of Management and Budget Circulars listed below:

- 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

3. 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. CHDO's funding proposal entitled "20__ _____" dated _____, 20__;
- B. Annual Action Plan;
- C. City's Monitoring and Financial Policy;
- D. Part II, Supplementary General Conditions for Federally and/or City Assisted Activities.

4. Reimbursement of Expenses

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 PJ staff shall deem reasonably necessary to determine that payments under the Agreement are due and payable. Upon receipt of said request and the appropriate documentation, the PJ shall promptly reimburse CHDO for costs which are eligible under the Program up to the amount set forth above. Additionally, the PJ will not reimburse CHDO for a request for reimbursement that is not received by the PJ within fifteen (15) days of the date of expiration of the term of this Agreement or its termination. The above requirements may be waived by the Manager in writing. All sums payable under this Agreement shall be paid from 20__ HOME Program Fund 260, Agency 020, Object 5434, CD__HM – CH__-2270.

5. Term

Notwithstanding the date of the signatures to this Agreement, the term of this Agreement shall commence on April 1, 20__, and shall continue until March 31, 20__, unless terminated sooner as provided for herein. Notwithstanding the above, the term of this Agreement may be extended for an additional twelve (12) month period upon the prior written approval of the Manager. No activity may begin before the environmental review clearance date.

6. Establishment and Maintenance of Records

Records shall be maintained by CHDO in accordance with requirements prescribed by HUD or PJ 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.

7. Reports

CHDO shall be responsible for furnishing to PJ such statements, records, data and information as HUD or the PJ may require pertaining to matters covered by this Agreement. Further, CHDO agrees that it shall prepare and forward to the City such information as is required in order for the PJ to meet the requirements of HUD's grantee Consolidated Annual Performance and Evaluation Report. In addition, CHDO shall promptly furnish to the PJ any and all financial statements; financial reports; audits; and quarterly, semi-annual or annual statements prepared by or on behalf of CHDO 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 are developed by or on behalf of CHDO.

8. Inspections

CHDO shall ensure that at any time during normal business hours and as often as PJ, 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 PJ, 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. CHDO will also permit PJ, 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.

9. Independent Audit

If Agency expends less than \$750,000 from all federal funding sources, including funds expended under this contract, during its fiscal year, Agency shall submit a financial statement audit to the PJ within nine (9) months of the end of its fiscal year.

If Agency expends more than \$750,000 from all federal funding sources, including funds expended under this contract, during its fiscal year, Agency shall submit an A-133 Single Audit to the PJ within nine (9) months of the end of its fiscal year.

Any audit submitted must be conducted in accordance with all currently effective auditing standards. In addition, audit must be accompanied by the management letter. Failure to submit the management letter, or if none was issued, proof of non-issuance, may be cause for contract termination as provided for herein.

In the event that audit issuance or submission is unavoidably delayed, CHDO must request a waiver in writing from the PJ within nine (9) months of the end of its fiscal year. Failure to do so may be cause for contract termination as provided for herein.

10. Future CHDO Reserve Funded Project

Pursuant to 24 CFR Part 92.300(e) and (f), it is anticipated that CHDO will receive funds according to 92.300(a) within 24 months of receiving the funds under this Agreement based on PJ's project selection criteria and successful application for project development. Pursuant to 24 CFR Part 92.504(c)(6), Exhibit A of this agreement either specifies the project that is also being funded utilizing HOME funding, or if the CHDO is not also being awarded HOME funds to be developed, sponsored, or owned by the CHDO, Exhibit A will specify the terms and conditions upon which the future project funding expectation is based, as well as the consequences of failure to receive funding for a project. Such consequences may include, but are not limited to, additional training of CHDO staff, review of CHDO certification status which may lead to decertification, and/or suspension of payments by the PJ to CHDO under this agreement or any other PJ or City of Duluth agreement.

11. Relocation Requirements

The CHDO shall be required to demonstrate that it has complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, covering all HUD assisted programs and the government-wide implementing regulations at 24 CFR Part 42 and 49 CFR, Part 24.

12. Religious Organizations

Program funds may not be used in conjunction with housing used for primarily religious purposes.

13. Program Income

Program income as defined in 24 CFR 570.500(a) shall be reported and paid to the PJ upon its receipt in a form and time frame as determined by the PJ. Any program income on hand when this Agreement expires, or received after the expiration of this Agreement, shall be paid to the PJ as required by 24 CFR 92.503.

14. Reversion of Assets

Upon termination of this Agreement, all program funds on hand at the time of expiration and any accounts receivable attributable to the use of program funds or any other assets shall revert to the PJ.

15. Uniform Administrative Requirement

CHDO agrees that it will operate the program in conformance with the Uniform Administrative Requirements contained in 24 CFR 92.505.

16. Evidence of Status as a Community Housing Development Organization

Prior to execution of this Agreement, CHDO shall provide to PJ documentation proving its status as a Community Housing Development Organization.

17. Publicity Requirements

In any materials made public with regard to the activity, the CHDO agrees to include a reference to the assistance provided pursuant to this Agreement by PJ.

18. Enforcement Provisions

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

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

- A. Failure, for any reason, of the CHDO to fulfill any term or obligation under this Agreement, or any other agreement between the CHDO and the PJ or City, in a timely and proper manner.
- B. The making of any arrangement with or for the benefit of CHDO's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the CHDO that it is bankrupt; or filing by the CHDO of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the CHDO unless dismissed within forty-five (45) days.
- C. Submission by the CHDO to the PJ of reports, audits, management letters, or requests for payment that are untimely, incorrect or incomplete in any material respect, or failure by the CHDO to request a waiver in writing from the PJ within nine (9) months of the end of its fiscal year if an audit issuance or submission is unavoidably delayed.
- D. Ineffective or improper use of funds provided under this Agreement.
- E. Suspension or termination by HUD of the grant to the PJ under which this Agreement is funded.
- F. Noncompliance with all laws, ordinances, rules, regulations, Executive Orders, directives and codes of the United States of America, State of Minnesota and the PJ 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.
- G. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.

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

- H. Demand immediate and full repayment of the amount granted to CHDO pursuant to this Agreement.
- I. Seek injunctive relief to enforce the terms and conditions of this Agreement.
- J. Seek such other relief as may be available to PJ at law or in equity.

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

19. Independent Contractor

The CHDO's employees and agents will not be considered PJ employees. CHDO certifies that it is in compliance with Minnesota Statute 176.181 Subd. 2, pertaining to worker's compensation insurance coverage and benefits. Any claims that may arise under the Minnesota Worker's Compensation Act on behalf of CHDO's employees and any claims made by any third party as a consequence of any act or omission on the part of CHDO's employees are in no way the PJ's obligation or responsibility.

20. Indemnification

The CHDO agrees to defend, indemnify and save harmless the PJ and hold PJ, its officers, agents, servants and employees harmless from any and all claims, actions demands, suits, losses, judgments, costs, expenses and damages, direct and indirect, incident, incidental and consequential, including but not limited to attorney's fees, asserted by any person(s) including agents or employees of the PJ or the CHDO, arising out of or resulting from any actual or alleged act or omission of the CHDO, its officers, agents, servants or employees in connection with or relating to the performance of this Agreement. On ten (10) days' written notice from PJ, the CHDO shall appear and defend all lawsuits against the City growing out of such injuries or damages.

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. Subcontractors/Assignments

CHDO shall not make any assignment of this Agreement or 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 CHDO of any of the responsibility for fulfillment of this Agreement.

23. Conflict of Interest

No person who is an employee, agent, consultant, officer, or elected official or appointed official of the City of Duluth, no member or delegation of the Congress of the United States, the Minnesota Legislature, the Duluth City Council, or any other Federal, State or local official shall benefit from this Agreement. No employee, agent, consultant or officer of the Agency receiving HOME funds or persons who exercise or have exercised any functions or responsibilities with

respect to HOME activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.

24. Covenant Against Contingent Fees

CHDO warrants that it has not employed or retained any company or person to solicit and secure this Agreement, and that it has 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 of this Agreement.

25. Laws, Rules and Regulations

CHDO agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, State of Minnesota and the City and their respective agencies which are now or become applicable to its activities under this Agreement, including but not limited to all applicable regulations of the Department of Housing and Urban Development of the Government of the United States.

26. Notices

Notices to PJ shall be sufficient if sent by regular mail, postage prepaid, addressed to PJ in care of Community Development, 407 City Hall, Duluth, Minnesota 55802; and notices to CHDO if sent by regular mail, postage prepaid, addressed to CHDO at _____, Duluth, MN 55____, or to such other respective persons or addresses as the parties may designate to each other in writing.

27. Drug and Alcohol Free Policy

CHDO 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.

28. Waiver

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

29. 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.

30. HUD Funding Contingency

The parties acknowledge that reimbursements to CHDO under this Agreement are being provided in full or in part through HOME Program 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 HOME Program in any way whatsoever, or by action or inaction otherwise reduce, impair or eliminate the PJ's ability to perform its obligations under this Agreement, the PJ shall have the right, in the exercise of its sole and unfettered discretion, to reduce or eliminate the funding available to CHDO under this Agreement or to terminate or otherwise modify this Agreement in such a manner as, in the judgment of the PJ, best serves its interest with regard to carrying out or not carrying out any of the activities contemplated in the approved Five-Year Consolidated Plan for the City of Duluth.

31. No Third-Party Rights

This Agreement is to be construed and understood solely as an Agreement between CHDO and the PJ 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 its terms and conditions.

32. 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.

33. Entire Agreement

This Agreement, including all exhibits and all 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.

34. Fees

Agency is prohibited from charging servicing, origination, or other fees for the costs of administering the HOME funded program(s) except as permitted by CFR 24 92.214(b)(1).

35. Authority to Execute Agreement

CHDO 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 CHDO who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement will be the binding obligation and agreement of CHDO in accordance with the terms and conditions hereof.

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

PARTICIPATING JURISDICTION

_____ (CHDO) _____

By _____
Mayor

By _____
Its _____

Date: _____

Attest

_____ IRS Tax ID Number

City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney

20XX HOME PROGRAM HOMEBUYER PROJECT

(Project Name)

(Agency/CHDO Name)

THIS GRANT AGREEMENT, entered into this ____ day of _____, 20__, by and between the City of Duluth, a HOME Program Participating Jurisdiction (PJ), and _____ (Agency/CHDO).

WHEREAS, Agency has applied to the PJ for an allocation of HOME funds for the purpose of the below-described Project; and

WHEREAS, said funding has been approved by PJ pursuant to Resolution 0X-xxxxR, approved _____.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, PJ does hereby grant to the Agency the sum of _____ (\$ _____) under the following terms and conditions:

1. Program Adopted

The HOME Program provisions contained in 24 CFR Part 92 (the Program) are hereby adopted by reference and deemed to be a part of this Agreement. All activities carried on by the Agency pursuant to this Agreement shall be deemed to be governed by the Program.

2. Project Description

It is hereby agreed between the parties that the funds granted to the Agency under this Agreement shall be used exclusively for the purpose of (*development of homeowner housing*) (the Project) as stated in the attached Exhibit A and Exhibit B and as authorized in the Program. Exhibit A shall include the Project address(s) or legal description(s); HOME activity to be undertaken; the total number of homeowner units and type of units; whether or not the project involves land assembly and subdivision, environmental remediation, lead-based paint treatment, demolition or other site preparation, relocation, or infrastructure development; the type of ownership; a project schedule; additional Project elements; the number and type of accessible units as applicable; and the tasks to be performed by the Agency in their role as (*owner / developer / sponsor*) of the Project. Exhibit B shall include a budget detailing the use of HOME and other funds; and the basis on which the sales price of the homes will be established.

3. Term

The term of this Agreement shall commence on _____, 20__, the date of the signatures to this Agreement notwithstanding, and shall continue through _____, 20__, unless terminated earlier as provided for herein. Notwithstanding the above, the time for completing the Project and incurring eligible costs may be extended for a period of time not to exceed twelve (12) months upon the prior written approval of the Manager of the Community Development Division (the Manager).

4. Use of HOME Funds

The parties agree that the HOME funds granted to the Agency under this Agreement shall be used strictly in compliance with the sources and uses of funds statement, Project budget and schedule, and maximum and actual per unit HOME subsidy amount as set forth in Exhibit B. To be eligible for reimbursement, costs shall conform in character to those shown in Exhibit B and shall not exceed the amounts set forth in Exhibit B without the prior written approval of the Manager. All costs under this Agreement must be in conformance with the appropriate Federal Office of Management and Budget Circular listed below:

A-87, A-102, A-128 -- Local Public Agencies
A-122, A-133 -- All Other Entities

5. Rehabilitation Plan

Prior to commencement of the Project, the Agency agrees to submit plans and specifications showing the nature and character of all work to be undertaken and setting forth the proposed time frames for said construction activities (the Rehabilitation Plans). Said Rehabilitation Plans shall be subject to the approval of the Manager, which approval shall not be unreasonably withheld. In the event the Manager rejects a Rehabilitation Plan for any reason, the parties agree that they will work together in an expeditious manner to come to a mutually agreeable Rehabilitation Plan. In the event that the parties cannot agree to such a Rehabilitation Plan, this Agreement shall terminate.

6. Affordability Period

The Declaration of Restrictive Covenants, attached hereto as Exhibit C, requires that HOME-assisted units meet the affordability requirements of 24 CFR 92.254, for the length of the affordability period indicated in Exhibit A. Upon acquisition of a property or prior to the reimbursement of any costs by HOME funds, the Agency agrees to record the Declaration of Restriction Covenants in the office of the St. Louis County Recorder and to pay all costs associated therewith. Upon recordation, the Agency shall provide to PJ an executed original of the Declaration of Restrictive Covenants showing the date and document numbers of record or a duly certified copy of the executed originals.

Upon completion of each housing unit by the Agency, in accordance with this Agreement, the Agency will submit to the PJ a HOME Program Homeowner Completion Report. City will promptly enter the data into the Integrated Disbursement and Information System (IDIS), and PJ will provide a Notification Certificate to Agency. Agency agrees to record the Notification Certificate in the office of the St. Louis County Recorder and to pay all costs associated therewith.

7. Principal Residence

During the affordability period, the initial buyer and any subsequent buyers must occupy the HOME-assisted unit as their principal residence. The Agency will include this requirement in their agreement with the buyer(s), and at least annually, the Agency will verify principal occupancy.

8. HOME Income Limits

Agency will determine that the initial buyer and any subsequent buyers have an annual income at the time of the purchase of the home at or below 80% of the Duluth area median income. Annual household income will be determined utilizing the adjusted gross income as defined for purposes of reporting under Internal Revenue Service 1040 series for individual Federal annual income tax purposes.

9. Property Value Limits

The Agency will ensure that for single family homes that are newly constructed or acquired, the purchase price will not exceed 95% of the median purchase price of homes in Duluth. The Agency will also ensure for single family homes that are acquired and then rehabilitated, the after rehabilitation value of the home will not exceed 95% of the Duluth area median purchase price. PJ determines the actual 95% of area median value limit in accordance with CFR 24 92.254(a)(2)(iii) for HOME assisted homeownership housing, as indicated in Exhibit A.

10. Buyer Agreement

The PJ delegates to the Agency the responsibility for executing the HOME program written agreement with the buyer of the HOME assisted unit. The agency will ensure the attached "Agreement Between the Participating Jurisdiction and the Homebuyer" (Exhibit D) is reviewed with the buyer prior to closing on the purchase of the house, and that the buyer understands and agrees to the HOME requirements. Agency agrees that the sale of the house is contingent on the execution of the PJ and homebuyer agreement.

11. Resale Provisions and Terms

The PJ designates the resale provision to be used for this Project. If the HOME assisted property is transferred through sale or foreclosure before the end of the

affordability period, the property must be sold to another buyer that meets the annual income requirement of this Agreement, the property must be sold at an affordable price, and the owner must receive a fair return on their investment including capital improvements. Affordable price and fair return on investment is defined in the attached Exhibit D.

The Agency agrees to submit to the PJ documentation related to the resale or transfer of the property in a format determined by the PJ prior to the anticipated closing date. The PJ will notify the Agency whether or not the sale or transfer is approved, and the Agency agrees the sale or transfer of the property is contingent on the PJ's approval.

Repayment of the HOME funds will be required if the housing does not meet the resale requirements for the length of the affordability period indicated in Exhibit A, which affordability period will commence on the date of the issuance of the Notification Certificate.

12. Religious Activities

The Agency shall not require homebuyers to participate in inherently religious activities such as worship, religious instruction, or proselytizing. If Agency is a faith-based organization, Agency may carry out its mission related to religious beliefs, provided that HOME funds do not financially support inherently religious activities. It is acceptable for Agency's Board of Directors to be selected based on religious practice, as well as religious references in mission statements and other governing documents. Agency agrees to serve all eligible households without regard to religion, and shall not restrict HOME units to people of a particular religion or denomination. Eligibility of an applicant for HOME assisted housing must not rely on the applicant's participation in religious activities or programs.

13. Property Standards

Prior to the buyer purchasing and occupying a HOME assisted housing unit, the Agency warrants and agrees that the unit will be in compliance with all housing maintenance codes, building and fire codes applicable to structures of its type in the City of Duluth, and with PJ's rehabilitation standards.

If the HOME assisted housing unit was built prior to 1978, the Agency warrants and agrees that upon completion of the rehabilitation, the unit will meet the requirements of HUD's Lead Safe Housing Rule (24 CFR Part 35). The Lead Safe Housing Rule Subparts that apply to the Project are identified in Exhibit E.

All construction/rehabilitation work to be funded under this Agreement shall be performed by a contractor or contractors selected pursuant to a competitive bidding process, or by employees of the Agency. All contractors shall be required to provide public liability insurance, automobile liability insurance, builder's risk

insurance, and workers' compensation insurance in forms and amounts acceptable to PJ.

14. Labor Standards

Every contract for the construction and/or rehabilitation of housing that includes twelve (12) or more HOME assisted units must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Hours and Safety Standards Act, listed in Exhibit E.

15. Displacement and Relocation Requirements

The Agency shall take all necessary steps possible to minimize displacement. If displacement cannot be avoided, Agency shall be required to demonstrate that it has complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as listed in Exhibit E. At PJ's request, Agency shall submit a written Relocation Plan for approval by the Manager.

16. Conflict of Interest

No person who is an employee, agent, consultant, officer, or elected official or appointed official of the City of Duluth, no member or delegation of the Congress of the United States, the Minnesota Legislature, the Duluth City Council, or any other Federal, State or local official shall benefit from this Agreement. No employee, agent, consultant or officer of the Agency receiving HOME funds or persons who exercise or have exercised any functions or responsibilities with respect to HOME activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.

Furthermore, no employee, agent, consultant or officer of the Agency may occupy a HOME assisted housing unit, except for an employee or agent of the Agency who occupies a housing unit as a rental project manager or maintenance worker.

17. Affirmative Marketing

Every project that includes five or more HOME assisted units, 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 and the term of the Declaration of Restrictive Covenants. Prior to funds being reimbursed under this Agreement, the Agency shall submit, and have approved by the Manager, an Affirmative Marketing Plan. The PJ reserves the right to annually review Agency's records documenting affirmative marketing actions, and Agency agrees to take any corrective actions PJ may require when affirmative marketing requirements are not met.

18. Reimbursement of Project Costs

PJ agrees that it will reimburse the Agency for the costs of work conforming to those specified in Exhibit B which are eligible for reimbursement under the Program up to the full amount of the Agreement herein. The Agency shall only request disbursement of HOME funds when the funds are needed to pay eligible costs, and only in the amount needed for such costs. The Agency may apply to the PJ for such reimbursement not more frequently than monthly for expenses incurred in implementing Project, and only for amounts over One Hundred Dollars (\$100.00). The Agency's draw requests shall be accompanied by such documentation as PJ shall deem reasonably necessary to determine that the Project has been completed to that level and that payments for materials and services rendered to the Project and the property are due and payable. Once the PJ determines that the draw request is payable and in conformance with the terms and conditions of this Agreement, PJ shall promptly pay the certified amount. PJ will not reimburse costs incurred on or prior to December 31 in any year if those expenses have not been included in a request for reimbursement which has been received by PJ prior to January 15 of the following year. In the event that January 15 falls on a holiday or a weekend, the Agency may submit the request the following business day. The above requirements may be waived by the Manager in writing. All sums payable under this Agreement shall be paid as follows:

_____ Dollars (\$ _____) from 200x HOME Program
Fund 260, Agency 020, CD0xHM - CH0x-xxxx.

Agency will retain in their files appropriately executed change orders signed by the Agency and contractor(s). Any change order that requires an increase or decrease in the amount of HOME funding in a housing unit will be submitted to PJ for review and approval to ensure adequate funds are available to reimburse costs and the costs and construction activities are necessary and reasonable.

The PJ will hold a retainage in an amount determined by the PJ of HOME funds. Retainage will be paid to the Agency when the rehabilitation of the HOME assisted housing is completed, the Agency certifies there are no liens or lienable debts that are outstanding with regard to the improvements to the unit; and the Agency submits a HOME completion report that accepted by the PJ and entered into the IDIS system.

19. Other Project Requirements

The Agency shall comply with all applicable federal and state laws and regulations as described in 24 CFR Part 92, subpart H inclusive, listed as Exhibit E and attached.

20. Provisions for Community Housing Development Organization (CHDO)

Prior to execution of this Agreement, Agency shall provide to PJ documentation proving its eligibility as a Community Housing Development Organization (CHDO), including the Agency's conflict of interest policy. PJ will review documentation, and provide certification of CHDO status to Agency as warranted. No HOME funds awarded under this Agreement are to be used for project-specific technical assistance or site control loans.

21. Reports and Records

The Agency shall be responsible for furnishing to HUD or the PJ such statements, records, data and information as HUD or the PJ may require pertaining to matters covered by this Agreement. In addition to the requirements contained in the Part II, "Supplementary General Conditions for Federally and/or City Assisted Activities," the Agency agrees that it shall prepare and forward to the PJ such information as is required in order for the PJ to meet the requirements of HUD's grantee Consolidated Annual Performance and Evaluation Report. The Agency shall promptly furnish to the PJ any and all financial statements; financial reports; and audits 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 are developed by or on behalf of the Agency.

The Agency shall submit to the PJ 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 during the Agency's fiscal year, the Agency shall submit to the PJ a financial statement audit conducted in accordance with all effective auditing standards, including management letter, within nine (9) months of the end of its fiscal year.

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD or the PJ with respect to all matters covered by this Agreement. Except as otherwise authorized by HUD, such records shall be maintained by the Agency for a period of six (6) years after the expiration of the term of this Agreement and the affordability period. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

The Agency will ensure that all costs shall be 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, and these documents pertaining in whole or in part to the Project shall be treated as records by the Agency.

The Agency shall ensure that at any time during normal business hours and as often as the PJ, 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 the PJ, 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 the PJ, 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.

22. Enforcement Provisions

In order to ensure compliance with the terms and conditions of this Agreement, the Agency agrees that PJ and its agents and staff shall have the right to have access to the Project units and to inspect them at reasonable times and with reasonable notice to the Agency.

The affordability requirement, as required by this agreement, shall be enforced by the Declaration of Restrictive Covenants (Exhibit C), as shown by an executed original or duly certified copy of the executed original provided by Agency to PJ for each HOME assisted unit.

The PJ may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The PJ 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. Notwithstanding the above, the PJ 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 PJ, until there is a cure by the Agency, a waiver by the PJ, or the Agreement is terminated.

Upon termination of this Agreement, all program funds on hand at the time of expiration and any accounts receivable attributable to the use of program funds shall revert to the PJ. In the event that the Agreement is terminated for cause, PJ shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

Further, the Agency shall not be relieved of the liability to the PJ for damages sustained by the PJ by virtue of any breach of this Agreement by the Agency, and the PJ may withhold any reimbursement to the Agency on this and other

agreements between the Agency and the City of Duluth for the purpose of set-off until such time as the exact amount of damages due the PJ from the Agency can be determined. For the purposes of this Agreement, cause may include any of the following:

- A. Failure, for any reason, of the Agency to fulfill any of the terms or obligations under this Agreement, the Declaration of Restrictive Covenants, or any other agreement between the Agency and the PJ or City of Duluth, in a timely and proper manner.
- B. 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.
- C. Submission by the Agency to the PJ of reports, audits or requests for payment that are untimely, incorrect or incomplete in any material respect.
- D. Ineffective or improper use of funds provided under this Agreement.
- E. Suspension, termination, reduction or elimination by HUD or by the Congress of the United States of the grant to the PJ under which this Agreement is funded.
- F. Noncompliance with any laws, ordinances, rules, regulations, Executive Orders, directives or codes of the United States of America, State of Minnesota or the City of Duluth or their respective agencies which are now or later become applicable to its activities under this Agreement, including, but not limited to, any applicable regulations of HUD.
- G. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.
- H. Failure to complete all work on the Project as provided for herein.
- I. The abandonment of the property by the Agency or the conversion of the housing units to any use other than that of housing for low- and moderate-income families as provided for herein.
- J. Failure to enforce the resale requirement during the period of affordability.
- K. Failure to record the Declaration of Restrictive Covenants or the IDIS Certificate of Notification as provided for herein.

- L. Beginning rehab activities prior to the environmental clearance date.
- J. Beginning rehab activities prior to PJ approval to proceed following subsidy layering review (if applicable).
- K. Beginning rehab activities prior to an inspection of the housing structure for compliance with housing codes and lead-based paint hazards (if applicable).

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

- L. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.
- M. Seek injunctive relief to enforce the terms and conditions of this Agreement.
- N. Seek such other relief as may be available to PJ at law or in equity.

23. Anti-Lobbying

Agency shall comply with the anti-lobbying legislation, ensuring that no federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Further, if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

24. Subcontractors/Assignability

The Agency shall not make any assignment of this Agreement or subcontract with any other party without the prior written consent of the Manager; provided, however, that claims for money due or to become due to the Agency from the PJ under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the PJ. The Manager hereby consents to the Agency subcontracting with subcontractor(s) selected pursuant to competitive bidding process who are performing the construction /

rehabilitation work. 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.

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. Insurance

The Agency shall carry fire and extended coverage insurance on the HOME assisted housing units in an amount equal to the full value of the unit and contents, and public liability insurance in amounts reasonably determined adequate by PJ, until the ownership of the unit is transferred to the buyer.

27. Publicity Requirements

In any materials made public with regard to the Project, the Agency agrees to include a reference to the assistance provided pursuant to this Agreement by PJ.

28. Independent Contractor

The CHDO's employees and agents will not be considered PJ employees. CHDO certifies that it is in compliance with Minnesota Statute 176.181 Subd. 2, pertaining to worker's compensation insurance coverage and benefits. Any claims that may arise under the Minnesota Worker's Compensation Act on behalf of CHDO's employees and any claims made by any third party as a consequence of any act or omission on the part of CHDO's employees are in no way the PJ's obligation or responsibility.

29. Idemnification

The Agency agrees to defend, indemnify and save harmless the PJ and hold PJ, its officers, agents, servants and employees harmless from any and all claims, actions demands, suits, losses, judgments, costs, expenses and damages, direct and indirect, incident, incidental and consequential, including but not limited to attorney's fees, asserted by any person(s) including agents or employees of the PJ 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 this Agreement. On ten (10) days' written notice from PJ, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

30. Notices

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

31. 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. Annual Action Plan
- B. City's Monitoring and Financial Policy

32. Debarment

The agency shall ensure 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.

33. Compliance with All Laws

The Agency agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, State of Minnesota and the City of Duluth and their respective agencies which are applicable to its activities under this Agreement, including but not limited to all laws relating to unlawful discrimination.

34. No Third-Party Rights

This Agreement is to be construed and understood solely as an Agreement between the Agency and PJ and shall not be deemed to create any rights in any other person, including any recipient. No recipient 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 PJ and the Agency, may be waived at any time by mutual agreement between PJ and the Agency.

35. Waiver

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

36. 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.

37. Entire Agreement

This Agreement, including all exhibits and all 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.

38. Repayment of HOME Funds

Program income as defined in 24 CFR 570.500(a) and any repayment or recapture of HOME funds shall be reported and remitted to PJ upon its receipt in a form and time frame as determined by the PJ. Any program income, repaid or recaptured HOME funds on hand when this Agreement expires, or received after the expiration of this Agreement, shall be remitted to PJ. However, proceeds from the sale of a HOME assisted unit to an eligible homebuyer may be retained by Agency to be used for HOME-eligible housing activities benefiting income qualifying households.

39. Fees

Agency is prohibited from charging servicing, origination, or other fees for the costs of administering the HOME funded program(s) except as permitted by CFR 24 92.214(b)(1).

40. Environmental Review

PJ is the responsible entity regarding environmental review utilizing a tiered evaluation process for environmental assessment of housing activities. Agency will assist the PJ with this responsibility by documenting detailed site and housing structure specific information related to flood plain zone location, historic preservation in accordance with PJ's programmatic agreement, and wetland delineation. If a project is located in a flood plain or wetland, or requires State Historic Preservation Office review under the programmatic agreement, Agency will submit detailed site and housing structure information and proposed rehab activities to PJ. Rehab activities involving physical intervention on a housing structure are prohibited prior to PJ's determination of compliance with environmental review requirements.

41. Subsidy Layering and Underwriting Review

In order to conduct underwriting and subsidy layering review, at PJ request Agency will submit to PJ a list of project funding sources and uses, evidence of a firm financial commitment by funding sources other than HOME funds, information related to neighborhood housing market conditions, and evidence of development experience and financial capacity. PJ will provide Agency approval to proceed with the rehab project once PJ has completed subsidy layering and underwriting review and determined the amount of HOME funds invested in the project is no more than necessary to provide quality, financially viable affordable housing.

42. Conversion of Unsold Homeownership Units to Rental Housing

In accordance with CFR 24 92.254(a)(3), any HOME assisted homebuyer unit must convert to a rental housing unit if it does not have a ratified sales contract with an eligible homebuyer within nine (9) months of the completion the rehab project. This rental housing unit must comply with all HOME rental provisions of CFR 24 92.252. If an unsold homebuyer unit is not converted to rental housing, Agency agrees to promptly repay PJ all HOME funds expended on the project.

43. HUD Funding Contingency

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

44. Authorization to Execute Agreement

The Agency represents to the PJ 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 will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions thereof.

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

CITY OF DULUTH

(Agency)

By _____
Mayor

By _____

Date: _____

Its _____

Attest:

IRS Tax ID No. _____

City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of
____, 20__, by _____, the
_____ of the Agency.

Notary Public

**20__ HOME PROGRAM
TENANT BASED RENTAL ASSISTANCE (TBRA) PROJECT AGREEMENT
(Agency)**

THIS GRANT AGREEMENT, entered into this __ day of _____, 20__, by and between the City of Duluth, a HOME Program Participating Jurisdiction (PJ), and _____(Agency).

WHEREAS, Agency has applied to the PJ for an allocation of HOME funds for the purpose of the below-described Project; and

WHEREAS, said funding has been approved by PJ pursuant to Resolution XX-XXXXR, approved _____.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein after contained, PJ does hereby grant to the agency the sum of _____ (\$_____) under the following terms and conditions:

1. Program Adopted

The HOME Program provisions contained in 24 CFR Part 92 (the Program) are hereby adopted by reference and deemed to be a part of this Agreement. All activities carried on the Agency pursuant to this Agreement shall be deemed to be governed by the Program.

2. Project Description

It is hereby agreed between the parties that the funds granted to the Agency under this Agreement shall be used exclusively for the purpose of the Tenant Based Rental Assistance project (the Project) as stated in the attached Exhibit A and as authorized in the Program. Exhibit A shall include the amount of HOME funds and program(s) to be administered; the tasks to be performed as HOME activities and a schedule for completing these tasks; environmental review clearance date; lead-based paint requirements; Agency roles and responsibilities; budget; and any additional Project elements specific to the implementation of the Project.

3. Term

The term of this Agreement shall commence on _____, 20__, the date of the signatures to this Agreement notwithstanding, and shall continue through _____, 20__, unless terminated earlier as provided for herein. Notwithstanding the above, the time for completing the Project and incurring eligible costs may be extended for a period of time not to exceed twelve (12)

months upon the prior written approval of the Manager of the Community Development Division (the Manager).

4. HOME Budget

The parties agree that the HOME funds granted to the Agency under this Agreement shall be used strictly in compliance with the budget shown in Exhibit A. To be eligible for reimbursement, costs shall conform in character to those shown in Exhibit A and shall not exceed the amounts set forth in said Exhibit A without the prior written approval of the Manager. All costs under this Agreement must be in conformance with the appropriate Federal Office of Management and Budget Circular listed below:

A-87, A-102, A-128 -- Local Public Agencies
A-122, A-133 -- All Other Entities

5. 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. Annual Action Plan;
- B. City's Monitoring and Financial Policy;

6. Religious Activities

The Agency shall not require tenants to participate in inherently religious activities such as worship, religious instruction, or proselytizing. If Agency is a faith-based organization, Agency may carry out its mission related to religious beliefs, provided that HOME funds do not financially support inherently religious activities. It is acceptable for Agency's Board of Directors to be selected based on religious practice, as well as religious references in mission statements and other governing documents. Agency agrees to serve all eligible households without regard to religion, and shall not restrict HOME units to people of a particular religion or denomination. Eligibility for HOME assisted housing must not rely on the applicant's participation in religious activities or programs.

7. HOME Income Limits

Agency will determine that homeowners assisted with HOME funds have an annual income at or below 80% of the Duluth area median income. Annual household income will be determined utilizing the adjusted gross income as defined for purposes of reporting under Internal Revenue Service 1040 series for

individual Federal annual income tax purposes.

8. Conflict of Interest

No person who is an employee, agent, consultant, officer, or elected official or appointed official of the City of Duluth, no member or delegation of the Congress of the United States, the Minnesota Legislature, the Duluth City Council, or any other Federal, State or local official shall benefit from this Agreement. No employee, agent, consultant or officer of the Agency receiving HOME funds or persons who exercise or have exercised any functions or responsibilities with respect to HOME activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Furthermore, no employee, agent, consultant or officer of the Agency may occupy a HOME assisted housing unit.

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. The PJ reserves the right to annually review Agency's records documenting affirmative marketing actions, and Agency agrees to take any corrective actions PJ may require when affirmative marketing requirements are not met.

10. Repayment of HOME Funds

Program income as defined in 24 CFR 570.500(a) and any repayment or recapture of HOME funds shall be reported and remitted to PJ upon its receipt in a form and time frame as determined by the PJ. Any program income, repaid or recaptured HOME funds on hand when this Agreement expires, or received after the expiration of this Agreement, shall be remitted to PJ.

11. Fees

Agency is prohibited from charging servicing, origination, or other fees for the costs of administering the HOME funded program(s) except as permitted by CFR 24 92.214(b)(1).

12. Reimbursement of Project Costs

PJ agrees that it will reimburse the Agency for the costs of work conforming to those specified in Exhibit A which are eligible for reimbursement under the Program up to the full amount of the Agreement herein. The Agency shall only request disbursement of HOME funds when the funds are needed to pay eligible costs, and only in the amount needed for such costs. The Agency may apply to the PJ for such reimbursement not more frequently than monthly for expenses incurred in implementing Project, and only for amounts over One Hundred Dollars (\$100.00). The Agency's draw requests shall be accompanied by such documentation as PJ shall deem reasonably necessary to determine that the Project has been completed to that level and that payments for materials and services rendered to the Project and the property are due and payable. Once the PJ determines that the draw request is payable and in conformance with the terms and conditions of this Agreement, PJ shall promptly pay the certified amount. PJ will not reimburse costs incurred on or prior to December 31 in any year if those expenses have not been included in a request for reimbursement which has been received by PJ prior to January 15 of the following year. In the event that January 15 falls on a holiday or a weekend, the Agency may submit the request the following business day. The above requirements may be waived by the Manager in writing. All sums payable under this Agreement shall be paid as follows:

_____ (\$ _____) from 20__ HOME
Program Fund 260, Agency 020, _____.

13. Other Project Requirements

The Agency shall comply with all applicable federal and state laws and regulations as described in 24 CFR Part 92, subpart H inclusive.

14. Reports and Records

The Agency shall be responsible for furnishing to HUD or the PJ such statements, records, data and information as HUD or the PJ may require pertaining to matters covered by this Agreement. In addition to the requirements contained in the Part II, "Supplementary General Conditions for Federally and/or City Assisted Activities," the Agency agrees that it shall prepare and forward to the PJ such information as is required in order for the PJ to meet the requirements of HUD's grantee Consolidated Annual Performance and Evaluation Report. The Agency shall promptly furnish to the PJ any and all financial statements; financial reports; and audits 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 are developed by or on behalf of the Agency.

The Agency shall submit to the PJ 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 during the Agency's fiscal year, the Agency shall submit to the PJ a financial statement audit conducted in accordance with all effective auditing standards, including management letter, within nine (9) months of the end of its fiscal year.

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD or the PJ with respect to all matters covered by this Agreement. Except as otherwise authorized by HUD, such records shall be maintained by the Agency for a period of six (6) years after the expiration of the term of this Agreement and the affordability period. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

The Agency will ensure that all costs shall be 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, and these documents pertaining in whole or in part to the Project shall be treated as records by the Agency.

The Agency shall ensure that at any time during normal business hours and as often as the PJ, 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 the PJ, 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 the PJ, 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.

15. Tenant Based Rental Assistance Agreement

The PJ hereby designates the Program Administrator to enter into the "Tenant Based Rental Assistance Agreement between the PJ and the Participant" form of which is attached in Exhibit D.

16. Enforcement Provisions

In order to ensure compliance with the terms and conditions of this Agreement, the Agency agrees that PJ and its agents and staff shall have the right to have access to the Project units and to inspect them at reasonable times and with reasonable notice to the Agency.

The PJ may terminate this Agreement without cause upon thirty (30) days' written notice to the Agency. The PJ 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. Notwithstanding the above, the PJ 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 PJ, until there is a cure by the Agency, a waiver by the PJ, or the Agreement is terminated.

Upon termination of this Agreement, all program funds on hand at the time of expiration and any accounts receivable attributable to the use of program funds shall revert to the PJ. In the event that the Agreement is terminated for cause, PJ shall be entitled to reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Agreement.

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

- A. Failure, for any reason, of the Agency to fulfill any of the terms or obligations under this Agreement, or any other agreement between the Agency and the PJ or City of Duluth, in a timely and proper manner.
- B. 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.
- C. Submission by the Agency to the PJ of reports, audits or requests for payment that are untimely, incorrect or incomplete in any material respect.
- D. Ineffective or improper use of funds provided under this Agreement.
- E. Suspension, termination, reduction or elimination by HUD or by the Congress of the United States of the grant to the PJ under which this Agreement is funded.
- F. Noncompliance with any laws, ordinances, rules, regulations, Executive Orders, directives or codes of the United States of America, State of

Minnesota or the City of Duluth or their respective agencies which are now or later become applicable to its activities under this Agreement, including, but not limited to, any applicable regulations of HUD.

- G. Payment of fees to solicit or secure this Agreement contingent upon or resulting from the award or making this Agreement.

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

- H. Demand immediate and full repayment of the amount granted to Agency pursuant to this Agreement.
- I. Seek injunctive relief to enforce the terms and conditions of this Agreement.
- J. Seek such other relief as may be available to PJ at law or in equity.

17. Anti-Lobbying

Agency shall comply with the anti-lobbying legislation, ensuring that no federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Further, if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

18. Assignability

The Agency shall not make any assignment of this Agreement or subcontract with any other party without the prior written consent of the Manager; provided, however, that claims for money due or to become due to the Agency from the PJ under this Agreement may be assigned to any bank without such approval. Notice of any such assignment shall be furnished promptly to the PJ. 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.

19. Publicity Requirements

In any materials made public with regard to the activity or the Project referred to above, the Agency agrees to include a reference to the assistance provided pursuant to this Agreement by City.

20. Matching Contribution

At PJ's request, the Agency shall be responsible for requiring that a Matching Contribution be available or in place with regard to such HOME funds which, when taken together with the aggregate of HOME grants previously extended under the HOME Program, meet the requirements for Matching Contributions as set forth in the HOME Program statutes and regulations promulgated thereunder.

21. Tenant Leases

All tenants participating in the Project must have a written lease that complies with HOME program requirements specified at CFR 24 92.253(a) and (b).

22. TBRA Rent Standard

PJ has set the TBRA rent standard as the same as the Duluth Housing and Redevelopment Authority's rent standard established in 24 CFR part 982, which governs the Section 8 Housing Choice Voucher Program.

23. Publicity Requirements

In any materials made public with regard to the Project, the Agency agrees to include a reference to the assistance provided pursuant to this Agreement by PJ.

24. Independent Contractor and Indemnity

The Agency's employees and agents will not be considered PJ employees. Agency certifies that it is in compliance with Minnesota Statute 176.181 Subd. 2, pertaining to worker's compensation insurance coverage and benefits. Any claims that may arise under the Minnesota Worker's Compensation Act on behalf of Agency's employees and any claims made by any third party as a consequence of any act or omission on the part of Agency's employees are in no way the PJ's obligation or responsibility.

25. Liability

Agency agrees to indemnify and save and hold PJ, its agents and employees harmless from any and all claims or causes of action arising from the performance

of the Agreement by Agency or Agency's agents or employees.

26. Notices

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

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. Entire Agreement

This Agreement, including all exhibits and all 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.

30. Authorization to Execute Agreement

The Agency represents to the PJ 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 will constitute and be the binding obligation and agreement of the Agency in accordance with the terms and conditions thereof.

31. Applicable Laws

This Agreement, together with all of its terms, covenants and conditions, is made in the State of Minnesota and shall be interpreted in accordance with the laws of the State of Minnesota.

32. HUD Funding Contingency

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

33. 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.

34. Entire Agreement

This Agreement, including all exhibits and all 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.

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

CITY OF DULUTH

(Agency)

By _____
Mayor

By _____
Its _____

Date: _____

IRS Tax ID No.

Attest:

City Clerk

Countersigned:

City Auditor

Approved as to form:

Assistant City Attorney

