

**2010 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
INDEPENDENT SCHOOL DISTRICT 709
MEMORIAL PARK COMMUNITY CENTER
PROJECT AGREEMENT**

THIS AGREEMENT is entered into this 15th day of April, 2011, by and between the City of Duluth, (the City), and Independent School District 709 (the Agency).

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

WHEREAS, the City established the Memorial Park Community Center Project pursuant to Resolution 09-0755R, approved December 21, 2009; and

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

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

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

1. Work to be Performed

The Agency shall implement the "Memorial Park Community Center Project" (the Project) in accordance with the Scope of Services and the Project Budget attached hereto as Exhibit A and incorporated herein, and as outlined in the Agency's funding proposal entitled "Memorial Park Community Center" dated August 31, 2009, which is on file in the Office of the City's Community Development Division (the Division), and which is incorporated by reference and made a part of this Agreement as if fully set forth herein. The Agency shall implement the Project to provide a defined area within the Laura MacArthur School for community uses (The Approved Use).

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

The Project shall be performed on property located at 720 North Central Avenue, Duluth, St. Louis County, Minnesota.

2. Documents to be Incorporated

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

- A. Agency's funding proposal entitled "Memorial Park Community Center Project " dated August, 2009;
- B. Scope of Services and Project Budget (Exhibit A). In the event of a conflict between Exhibit A and the above proposal, Exhibit A shall be deemed governing;
- C. 24 CFR Parts 84, 85, and 570;
- D. Federal Circulars A-87, A-102, A-110, A-122, and A-133;
- E. Part II - Supplementary General Conditions for federally and/or city assisted activities. In the event of a conflict between the terms and provisions of this Agreement and "Part II, Supplementary General Conditions," the terms and conditions of this Agreement shall be deemed to be governing;
- F. FY 2010 Annual Action Plan;
- G. City's Monitoring and Financial Policy.

3. Reimbursement of Expenses

For implementation of the Project under this Agreement, the City agrees to reimburse the Agency for "Eligible Costs" incurred by it in accordance with the Project Budget attached hereto as Exhibit A in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000). Any increase or decrease of an individual line item in the Project Budget must have the prior written approval of the Manager of the Division (Manager).

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

Federal Office of Management and Budget (OMB) Circular listed below:

A-87, 24 CFR 85, A-102	-- Local Public Agencies
A-21	-- Educational Institutions
A-110, A-122, A-133, 24 CFR84	-- All Other Entities

Requests for reimbursement shall be made no more frequently than monthly and shall be made only for amounts over One Hundred Dollars (\$100.00). Requests for reimbursement shall be accompanied by such documentation as the City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly reimburse the Agency for the "Eligible Costs" up to the amount set forth above. Additionally, the City will not reimburse the Agency for any cost incurred for which a request for reimbursement is not received by the City within fifteen (15) days of the date of expiration of the term of this Agreement or its termination. All reimbursement payments shall be made out of the 2010 Federal Program Fund 262 - Community Development - 020 - Project Account No. CD10CD - PFAC-PF02.

4. Joint Powers Agreement

It is agreed between the parties that the Joint Powers Agreement is imposed and shall be deemed to run with the land and all of its provisions shall be enforceable by the parties' respective heirs and assigns.

5. Term

The term of this Agreement shall be deemed to have commenced on April 15, 2011, the date of this Agreement notwithstanding, and shall continue through June 30, 2012 unless terminated earlier as provided for herein. Notwithstanding the above, the term of this Agreement may be extended for a period not to exceed twelve (12) months upon prior written approval of the Manager. Within fifteen (15) days following the expiration of the term of the Agreement, or its termination, the Agency's right to seek reimbursement shall cease and no further reimbursements may be made by City to the Agency under this Agreement. In the event the term of the Agreement or its termination falls on a holiday or a weekend, then the Agency shall submit documentation the following business day. Any unexpended balance remaining at the expiration of the term of the Agreement shall be reprogrammed. The term of the Agreement shall be in full force and effect for the full term of the Joint Powers Agreement.

6. Notice of Sale, Transfer or Change in Use

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

7. Insurance

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

8. Maintenance of the Property

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

9. Project Completion

The Project shall be completed on or before June 30, 2012, unless terminated earlier as provided for herein. Notwithstanding the above, time for completion may be extended for a period not to exceed twelve (12) months upon prior written approval of the Manager.

10. General Conditions

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

11. Records and Inspections

A. Records

1. Establishment, Maintenance and Inspection of Records

Records shall be maintained by the Agency in accordance with requirements prescribed by HUD or City with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement. Notwithstanding the above, where a longer period is prescribed by HUD, then such longer period shall apply.

2. Source Documentation

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

B. Reports and Information Generally

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

C. Additional Reports and Records

In addition to the requirements contained in the Supplementary General Conditions, the Agency agrees that it shall prepare and forward to the

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

D. Audits and Inspections

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

12. Independent Audit

The Agency shall submit to the City an A-133 audit within nine (9) months of the end of its fiscal year if the Agency expends \$500,000 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 \$500,000 from all federal funding sources, including monies expended under this Agreement, during the Agency's fiscal year, the Agency shall submit to the City a financial audit conducted in accordance with all effective auditing standards within nine (9) months of the end of its fiscal year. The City may, in its sole discretion, suspend payment to the Agency under this Agreement or terminate this Agreement for cause for failure of the Agency to submit the appropriate audit above within said nine-month period.

13. Program Income

Program income as defined in 24 CFR 570.500(a) shall be reported and paid to the City upon its receipt in a form and time frame as determined by the Manager. Notwithstanding the above, program income may be retained when needed for

cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section 108 security needs. Any program income on hand when this Agreement expires, or received after the expiration of this Agreement, shall be promptly paid to the City as required by 24 CFR 570.503(b)(8).

14. Property

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

15. Independent Contractor and Indemnity

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

16. Termination and Remedies

A. Termination

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

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

1. Failure, for any reason, of the Agency to fulfill its obligations under this Agreement in a timely and proper manner, including failure to comply in any respect with the Program, the Supplementary General Conditions, or any provision of this Agreement.
2. The making of any arrangement with or for the benefit of Agency's creditors involving an assignment to a trustee, receiver or similar fiduciary; or the written admission by the Agency that it is bankrupt; or filing by the Agency of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Agency unless dismissed within forty-five (45) days.
3. Failure to submit independent financial audits as required pursuant to this Agreement.

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

B. City's Rights Upon Termination for Cause

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

to be mutually exclusive:

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

C. Attorney's Fees

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

D. Nonwaiver

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

17. Subcontractors

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

18. Assignability

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

19. Debarment

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

20. Interests of Public Officials

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

21. Nondiscrimination and Equal Opportunity

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

22. Covenant Against Contingent Fees

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

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

23. Compliance with Laws

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

24. Notices

Notices to the City provided for herein shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to the City at the Office of Community

Development and Housing, Room 407 City Hall, Duluth, Minnesota 55802; and notices to the Agency if sent by regular United States Mail, postage prepaid, addressed to the Agency at Independent School District 709, 215 North First Avenue West, Duluth, MN 55806, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

25. Drug and Alcohol Free Policy

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

26. Applicable Law

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

27. Waiver

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

28. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

29. HUD Funding Contingency

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

30. No Third-Party Rights

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

31. Amendments

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

32. Entire Agreement

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

33. Authority to Execute Agreement

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

