PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0458R

RESOLUTION AUTHORIZING THE ACCEPTANCE OF $2,481,395 IN LEAD-BASED PAINT HAZARD CONTROL GRANT PROGRAM FUNDING FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL AND AUTHORIZING CONTRACTS WITH APPROPRIATE AGENCIES

CITY PROPOSAL:

RESOLVED, that the city council hereby accepts $2,481,395 in lead-based paint hazard control grant program funds from the U.S. Department of Housing and Urban Development's Office of Healthy Homes and Lead Hazard Control to address lead-based paint in Duluth residential properties and authorizes proper city officials to enter into contracts for implementing the city's program with the Duluth Housing and Redevelopment Authority for $2,255,000 and the American Lung Association in Minnesota for $181,395, contingent upon the completion of the environmental review process, and payable from Fund 262 (community development), Agency 020 (planning department), Object 5434 (grants & awards).

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

PLNG SK:bel 08/28/2013

STATEMENT OF PURPOSE: This resolution authorizes the City to accept a grant from the U.S. Housing and Urban Development (HUD) Office of Healthy Homes and Lead Hazard Control (OHHLHC) to be used to reduce the hazard of lead paint poisoning in Duluth residential properties, and to increase awareness and utilization of HUD Healthy Homes standards throughout the City.

In February 2013, the City, in coordination with the Duluth Housing and Redevelopment Authority (HRA) and the Duluth office of the American Lung Association in Minnesota (ALA) submitted an application to HUD entitled "Duluth Healthy Homes Partnership". The goals of the Partnership are to conduct 185 paint inspections and risk assessments; reduce lead paint hazards in 170 housing units; and provide 150 Healthy Home inspections resulting in Case Management services to 40 families and 15 comprehensive healthy home rehabs.

The grant is for a three year period. The City of Duluth will utilize $45,000 of the funds to cover the administration of the HRA and ALA contracts, attendance for mandatory HUD trainings, and for the submission of required reports to HUD.

The City's success in being awarded the Lead Hazard Control grant is due to both the HRA's and ALA's experience and expertise in implementing similar programs. The HRA and the City began addressing the problems of lead paint with a 1994 study to develop lead reduction strategies and test their effectiveness. Since then, the HRA has partnered with the City of St. Paul and the Hennepin County Consortium to successfully remediate lead hazards in 1,353 housing units in Duluth. In 2011, the City, along with the Duluth HRA and ALA were awarded a grant that allowed for the reduction of lead paint hazards in 70 units, 50 home visits, and provided training sessions for contractors and rental property owners.

LEAD-BASED PAINT HAZARD CONTROL PROGRAM
GRANT AGREEMENT
HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH (HRA)

THIS AGREEMENT is entered into this ___ day of _____2013, by and between the City of Duluth, (the City), and the Housing and Redevelopment Authority of Duluth (HRA) (the Agency).

WHEREAS, the Office of Healthy Homes and Lead Hazard Control (OHHLHC) has awarded the City funds made available by the U.S. Department of Housing and Urban Development (HUD) to implement a Lead-Based Paint Hazard Control Program (Program) which will use federal funds to remediate lead-based paint in homes and rental properties in Duluth; and

WHEREAS, the City accepted Program funds and authorized a contract with the HRA (Agency) pursuant to Resolution_____, approved_____; and

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

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

1. Use of Grant Funds

The Agency will use Program funds to remediate lead-based paint poisoning hazards in residential properties. The Agency shall implement the Program and perform the project activities identified in Exhibit A in a manner described in the City's Duluth Healthy Home Partnership Application submitted to HUD on file in the City's Community Development Division.

Assistance under the Program shall be targeted to those individuals/families meeting the most current HUD regulations and guidelines for assistance to low, moderate and middle-income individuals. The Agency shall use HUD's current income guidelines when determining whether assistance shall be provided under the terms of this Agreement. Documentation of income shall be the IRS Form 1040 method as prescribed by HUD in 24 CFR 570.609.

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. City's funding proposal entitled "Duluth Healthy Homes Partnership

Application," submitted to HUD in February 2013, including the schedule of articles, statement of work/work plan/benchmark standards, abstract of grant activities, and coverpage HUD 1044.

B. Exhibit A (Project Description), Exhibit B (Budget) as revised and submitted to HUD on 2/17/2011, Exhibit C (Benchmarks) and Exhibit D (Lead Hazard Control Activities). In the event of a conflict between Exhibit A, B, C or D and the above application, the Exhibits shall be deemed governing.

C. Title 24 of the Code of Federal Regulations (CFR), Parts 84 and 85.

D. Lead Hazard Control Program Policy Guidance Issuances.

E. Federal Circulars:
OMB Circular A-21
OMB Circular A-110, which was implemented by 24 CFR 84
OMB Circular A-133, which was implemented by 24 CFR 84 and 85

F. Notice of Funding Availability/NOFA (Federal Register/Vol. 75, No. 74/ Thursday, December 20, 2012 / Notices, FR-5700-N-04B.

G. City's Monitoring and Financial Policy

3. Reimbursement of Expenses

For implementation of the Program, the City agrees to reimburse the Agency for eligible costs incurred by it in accordance with Exhibit B (Budget) in an amount not to exceed $2,255,000 (Two Million Two Hundred Thousand Fifty-five Hundred dollars). Reimbursement under the provisions of this Agreement shall be limited to the line items shown in Exhibit B. Any increase or decrease of an individual line item in the Budget must have the prior written approval of the Manager and additional budget lines may not be added after the Program has begun operation without prior written approval of the Manager. Budget changes are contingent on approval of the OHHLHC as necessary.

Requests for reimbursement shall be made no more frequently than monthly and shall be made only for amounts more than Two Thousand Dollars ($2000.00) and less than $100,000, and in a format acceptable to City. Requests for reimbursement shall be accompanied by such documentation as City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly request reimbursement from OHHLHC. Once City receives reimbursement from OHHLHC, City will reimburse the Agency for the eligible costs up to the amount set forth above. Requests containing insufficient documentation as determined by the City must be revised

within fifteen (15) calendar days of notice by City to the Agency of said insufficiency or Agency forfeits the right to reimbursement of all items appearing in said request.

In the event the latest date to request reimbursement falls on a holiday or a weekend, then Agency shall submit the request and documentation the following business day. The City will not reimburse Agency for any cost incurred for which a request for reimbursement is not received by the City within fifteen (15) days of the expiration date of this Agreement or its termination. The requirements of this paragraph may be waived by the Manager in writing. The City may withhold reimbursements of costs if the Agency has not submitted programmatic reports which are approved by the Manager or if the Agency is not in compliance with the terms of any other Community Development agreement. All reimbursement payments shall be made out of the Fund 262, Agency 020, Object 5434, CDLEAD, Project 1734 HRA.

4. Term

The term of this Agreement shall be deemed to have commenced on _____, the date of this Agreement notwithstanding, and shall continue through_____, 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 and with the approval of OHHLHC. 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. No housing rehab activity may begin before the environmental review clearance date.

5. Reports

The Agency shall submit monthly production reports and within 15 days after the end of each quarter submit information required for the Quarterly Progress Reporting System (QPRS) that must be submitted by City to OHHLHC within 30 days of the end of each quarter. All statistical and narrative reports shall be submitted in a form approved by City. Reports must be submitted throughout the term of this Agreement, whether or not activity occurs or funds are disbursed in a given period. Monthly production reports shall be due within fifteen (15) days of the end of each month. In the event the due date to submit production reports falls on a holiday or a weekend, then the Agency shall submit reports the following business day.

6. Records and Inspections

A. Records

1. Establishment, Maintenance and Inspection of Records

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

2. Source Documentation

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

3. Additional Reports and Records

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

4. Audits and Inspections

The Agency shall ensure that at any time during normal business hours and as often as City, OHHLHC, 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, OHHLHC, 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, OHHLHC, representatives of the Comptroller General, the Legislative Auditor and/or the State Auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

B. Independent Audit

The Agency shall submit to the City an A-133 audit within nine (9) months of the end of its fiscal year if the Agency expends $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 statement audit conducted in accordance with all effective auditing standards, including the management letter, within nine (9) months of the end of its fiscal year.

7. Program Income

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

8. Publicity

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

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 Program during the term of this Agreement. Prior to any funds being reimbursed under this Agreement, the Agency shall submit, and have approved by the Manager, an Affirmative Marketing Plan.

10. Independent Contractor and Indemnity

It is agreed that nothing contained herein is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto. The Agency's officers, agents, servants and employees shall not be considered employees of the City. Any and all claims which may or might arise on behalf of Agency's officers, agents, servants and employees while

engaged in performing any work under this Agreement, or arising out of employment, including, without limitation, the Workers' Compensation Act of the State of Minnesota and claims of discrimination, shall in no way be the responsibility of the City. The Agency's officers, servants and employees shall not be entitled to any compensation or right of benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay from the City. Furthermore, the Agency agrees to defend, indemnify and save harmless the City and its officers, agents, servants and employees from any and all claims, actions, demands, suits, losses, judgments, costs, expenses and damages, direct and indirect, incidental and consequential, including but not limited to attorneys' fees, asserted by any person(s) including agents or employees of the City or the Agency, arising out of or resulting from any actual or alleged act or omission of the Agency, its officers, agents, servants or employees in connection with or relating to the performance of service under this Agreement. On ten (10) days' written notice from City, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

11. Termination and Remedies

A. Termination

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

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

Agreement, cause shall include any of the following:

1. Failure, for any reason, of the Agency to fulfill any of its obligations under this Agreement, or any other agreement between the Agency and the City, in a timely and proper manner, including failure to comply in any respect with the Program, or any provision of this Agreement.

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

3. Failure to submit complete reports when due to the City.

4. Submission by the Agency to the City of reports, audits or requests for payment that are untimely, incorrect or incomplete in any material respect.

5. Ineffective or improper use of funds provided under this Agreement.

6. Suspension or termination by HUD or OHHLHC of the grant to the City under which this Agreement is funded.

7. 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.

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

9. Failure to complete all work on the Project as provided for herein.

B. <u>City's Rights Upon Termination for Cause</u>

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.

C. Attorneys' Fees

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

D. Nonwaiver

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

12. Subcontractors

The Agency represents that it will utilize only its own personnel in the performance of services under this Agreement. The Agency will subcontract with the Lake Superior Community Health Center for blood lead level testing of children. The Agency shall not subcontract with any other party without the prior written consent of the Manager. The Manager hereby consents to the Agency subcontracting with subcontractor(s) selected pursuant to sealed bids who are performing 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.

13. 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 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.

14. 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.

15. Covenant Against Contingent Fees

The Agency warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that 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 this Agreement. For breach of this warranty, the City shall have the right to annul this Agreement without liability.

16. Equal Employment Opportunity

Agency must include Executive Order 11246 (Standard Federal Equal Employment Opportunity Construction Contract specifications) in all bidding documents and contract documents for which construction costs exceed $10,000.

17. Section 3 Clause

Agency must include the Section 3 Clause, as described in 24 CFR 135.38, regarding economic opportunities for low and very low income persons in all Agency bidding and contract documents for which the construction costs exceed $100,000.

18. Uniform Relocation Assistance and Real Property Acquisition Policies Act

Agency shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as further described in Section 3.07 of the Manual.

19. Data Practices Act

Agency shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

20. Conflict of Interest

Agency shall have established policies and procedures that include standards of conduct governing employees engaged in the award or administration of contracts funded in whole or in part with Program funds.

21. Interests of Public Officials

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

22. Notices

Notices to the City provided for herein shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to the City at the Community Development Division, Room 407 City Hall, Duluth, Minnesota 55802; and notices to the Agency if sent by regular United States Mail, postage prepaid, addressed to the Agency at Housing and Redevelopment Authority of Duluth, 222 East 2nd Street, Duluth, MN 55805, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

23. 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.

24. 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.

25. 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.

26. Waiver

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

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

CITY OF DULUTH

By _____
Mayor

Attest:

_____
City Clerk

Countersigned:

_____
City Auditor

Approved as to form:

_____
City Attorney

HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH (HRA)

By _____
Its _____

_____
Agency/ Federal (IRS)
Taxpayer Identification Number

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, the _____ of the Housing and Redevelopment Authority of Duluth, the Agency, on behalf of the Agency.

_____
Notary Public

LEAD-BASED PAINT HAZARD CONTROL PROGRAM
GRANT AGREEMENT
AMERICAN LUNG ASSOCIATION IN MINNESOTA

THIS AGREEMENT is entered into this ___ day of ____, 2013, by and between the City of Duluth, (the City), and the American Lung Association in Minnesota (ALA) (the Agency).

WHEREAS, the Office of Healthy Homes and Lead Hazard Control (OHHLHC) has awarded the City funds made available by the U.S. Department of Housing and Urban Development (HUD) to implement a Lead-Based Paint Hazard Control Program (Program) which will use federal funds to remediate lead-based paint in homes and rental properties in Duluth; and

WHEREAS, the City accepted Program funds and authorized a contract with the ALA (Agency) pursuant to Resolution_____, approved _____; and

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

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

1. Use of Grant Funds

The Agency will use Program funds to, in conjunction with lead hazard control activities in homes that have children with asthma, coordinate community resources and referrals, provide training on healthy home protocols and assessments for asthma, and provide families with education about asthma and environmental trigger management. The Agency shall implement the Program and perform the project activities identified in Exhibit A in a manner described in the City's Duluth Healthy Home Partnership Application submitted to OHHLHC on file in the City's Community Development Division.

Assistance under the Program shall be targeted to those individuals/families meeting the most current HUD regulations and guidelines for assistance to low, moderate and middle-income individuals. The Agency shall use HUD's current income guidelines when determining whether assistance shall be provided under the terms of this Agreement. Documentation of income shall be the IRS Form 1040 method as prescribed by HUD in 24 CFR 570.609.

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. City's funding proposal entitled "Duluth Healthy Homes Partnership Application," submitted to OHHLHC in February 2013, including the schedule of articles, statement of work/work plan/benchmark standards, abstract of grant activities, and coverpage HUD 1044.

B. Exhibit A (Project Description, Timeline, and Budget) and Exhibit B (Work Plan/Benchmark Performance Standards. In the event of a conflict between Exhibit A and Exhibit B and the above application, the Exhibits shall be deemed governing.

C. Title 24 of the Code of Federal Regulations (CFR), Parts 84 and 85.

D. Lead Hazard Control Program Policy Guidance Issuances.

E. Federal Circulars:
OMB Circular A-21
OMB Circular A-110, which was implemented by 24 CFR 84
OMB Circular A-133, which was implemented by 24 CFR 84 and 85

F. Notice of Funding Availability/NOFA (Federal Register/Vol. 77, No. 245/ Thursday, December 20, 2012 / Notices, FR-5700-N-04B.

G. City's Monitoring and Financial Policy

3. Reimbursement of Expenses

For implementation of the Program, the City agrees to reimburse the Agency for eligible costs incurred by it in accordance with Exhibit A in an amount not to exceed $181,394 (One Hundred and Eighty One Thousand, Three Hundred and Ninety Four dollars). Reimbursement under the provisions of this Agreement shall be limited to the line items in the Budget shown in Exhibit A. Any increase or decrease of an individual line item must have the prior written approval of the Manager and additional budget lines may not be added after the Program has begun operation without prior written approval of the Manager. Budget changes are contingent on approval of the OHHLHC as necessary.

Requests for reimbursement shall be made no more frequently than quarterly and shall be made only for amounts more than Two Thousand Dollars ($2000.00) and less than $100,000, and in a format acceptable to City. Requests for reimbursement shall be accompanied by such documentation as

City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly request reimbursement from OHHLHC. Once City receives reimbursement from OHHLHC, City will reimburse the Agency for the eligible costs up to the amount set forth above. Requests containing insufficient documentation as determined by the City must be revised within fifteen (15) calendar days of notice by City to the Agency of said insufficiency or Agency forfeits the right to reimbursement of all items appearing in said request.

In the event the latest date to request reimbursement falls on a holiday or a weekend, then Agency shall submit the request and documentation the following business day. The City will not reimburse Agency for any cost incurred for which a request for reimbursement is not received by the City within fifteen (15) days of the expiration date of this Agreement or its termination. The requirements of this paragraph may be waived by the Manager in writing. The City may withhold reimbursements of costs if the Agency has not submitted programmatic reports which are approved by the Manager or if the Agency is not in compliance with the terms of any other Community Development agreement. All reimbursement payments shall be made out of the Fund 262, Agency 020, Object 5434, CDLEAD, Project 6530 ALA.

4. Term

The term of this Agreement shall be deemed to have commenced on _____, the date of this Agreement notwithstanding, and shall continue through _____, 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 and with the approval of OHHLHC. 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.

5. Reports

The Agency shall submit programmatic reports to the City within fifteen (15) days after the end of each quarter, and at such time as the final request for reimbursement is submitted prior to the end of the contract term. Quarterly reports will include any information required for the Quarterly Progress Reporting System (QPRS) report that must be submitted by City to OHHLHC within 30 days of the end of each quarter. All statistical and narrative reports shall be submitted in a form approved by City. Reports must be submitted throughout the term of this Agreement, whether or not activity occurs or funds are disbursed in a

given period. In the event the due date to submit programmatic reports falls on a holiday or a weekend, then the Agency shall submit reports the following business day.

6. Records and Inspections

A. Records

1. Establishment, Maintenance and Inspection of Records

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

2. Source Documentation

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

3. Additional Reports and Records

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

4. Audits and Inspections

The Agency shall ensure that at any time during normal business hours and as often as City, OHHLHC, 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, OHHLHC, 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, OHHLHC, representatives of the

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

B. Independent Audit

The Agency shall submit to the City an A-133 audit within nine (9) months of the end of its fiscal year if the Agency expends $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 statement audit conducted in accordance with all effective auditing standards, including the management letter, within nine (9) months of the end of its fiscal year.

7. Program Income

The Agency shall not generate program income from any of the activities performed or funds expended under this Agreement.

8. Publicity

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

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 Program during the term of this Agreement. Prior to any funds being reimbursed under this Agreement, the Agency shall submit, and have approved by the Manager, an Affirmative Marketing Plan.

10. Independent Contractor and Indemnity

It is agreed that nothing contained herein is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto. The Agency's officers, agents, servants and employees shall not be considered employees of the City. Any and all claims which may or might arise on behalf of Agency's officers, agents, servants and employees while

engaged in performing any work under this Agreement, or arising out of employment, including, without limitation, the Workers' Compensation Act of the State of Minnesota and claims of discrimination, shall in no way be the responsibility of the City. The Agency's officers, servants and employees shall not be entitled to any compensation or right of benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay from the City. Furthermore, the Agency agrees to defend, indemnify and save harmless the City and its officers, agents, servants and employees from any and all claims, actions, demands, suits, losses, judgments, costs, expenses and damages, direct and indirect, incidental and consequential, including but not limited to attorneys' fees, asserted by any person(s) including agents or employees of the City or the Agency, arising out of or resulting from any actual or alleged act or omission of the Agency, its officers, agents, servants or employees in connection with or relating to the performance of service under this Agreement. On ten (10) days' written notice from City, the Agency shall appear and defend all lawsuits against the City growing out of such injuries or damages.

11. Termination and Remedies

A. Termination

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

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

Agreement, cause shall include any of the following:

1. Failure, for any reason, of the Agency to fulfill any of its obligations under this Agreement, or any other agreement between the Agency and the City, in a timely and proper manner, including failure to comply in any respect with the Program, or any provision of this Agreement.

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

3. Failure to submit complete reports when due to the City.

4. Submission by the Agency to the City of reports, audits or requests for payment that are untimely, incorrect or incomplete in any material respect.

5. Ineffective or improper use of funds provided under this Agreement.

6. Suspension or termination by HUD or OHHLHC of the grant to the City under which this Agreement is funded.

7. 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.

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

9. Failure to complete all work on the Project as provided for herein.

B. <u>City's Rights Upon Termination for Cause</u>

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.

C. Attorneys' Fees

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

D. Nonwaiver

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

12. Subcontractors

The Agency represents that it will utilize only its own personnel in the performance of services under this Agreement. The Agency shall not 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.

13. 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 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.

14. 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 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 this Agreement. For breach of this warranty, the City shall have the right to

annul this Agreement without liability.

15. Data Practices Act

Agency shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

16. Conflict of Interest

Agency shall have established policies and procedures that include standards of conduct governing employees engaged in the award or administration of contracts funded in whole or in part with Program funds.

17. Interests of Public Officials

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

18. Notices

Notices to the City provided for herein shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to the City at the Community Development Division, Room 407 City Hall, Duluth, Minnesota 55802; and notices to the Agency if sent by regular United States Mail, postage prepaid, addressed to the Agency at American Lung Association, 424 West Superior Street, Suite 202, Duluth, MN 55802, or to such other respective persons or addresses as the parties may designate to each other in writing.

19. Nondiscrimination and Equal Opportunity

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

20. Drug and Alcohol Free Policy

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

21. Applicable Law

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

22. Waiver

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

23. Severability

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

24. No Third-Party Rights

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

25. Amendments

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

26. Entire Agreement

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

27. Authority to Execute Agreement

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

in accordance with the terms and conditions hereof.

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

CITY OF DULUTH

By _____
Mayor

Attest:

_____
City Clerk

Countersigned:

_____
City Auditor

Approved as to form:

_____
City Attorney

AMERICAN LUNG ASSOCIATION
OF MINNESOTA (ALA)

By_____
Its_____

_____
Agency/ Federal (IRS)
Taxpayer Identification Number

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, the _____ of the American Lung Association of Minnesota, the Agency, on behalf of the Agency.

_____
Notary Public