

2022- 2023 DENVER AIR SERVICE GRANT FUNDING AGREEMENT

BY AND BETWEEN

DULUTH AIRPORT AUTHORITY

AND

CITY OF DULUTH

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation, hereinafter referred to as “City”, and the DULUTH AIRPORT AUTHORITY, located at 4701 Grinden Drive, Duluth, MN 55811, hereinafter referred to as “DAA”.

WHEREAS, by various legislation the City has provided for the imposition of taxes on certain hotel/motel accommodations (Lodging Tax) and certain food and beverage transactions (Food and Beverage Tax) and provided that certain of the proceeds of said taxes collected are to be placed in Fund 258 and related funds and accounts to be expended by the City for advertising and promoting the City of Duluth as a tourist and convention center; and

WHEREAS, the City recognizes that the transportation, programs, events, and community involvement & learning opportunities provided by DAA promote the City of Duluth as a tourism and convention center and increases the quality of life for visitors and residents alike; and

WHEREAS, the DAA has secured a federal grant award of \$750,000 from the United States Department of Transportation through the Small Community Air Service Development Program to provide a minimum revenue guarantee (MRG) and associated marketing program to recruit, initiate and support new air service to Denver International Airport (DEN); and

WHEREAS, said grant award and agreement is attached hereto and incorporated by reference into this Agreement as Exhibit A; and

WHEREAS, said grant award and agreement requires a local financial contribution of \$279,000; and

WHEREAS, new air service to and from Denver International Airport specifically promotes the City of Duluth as a tourism and convention center and increases the quality of life for visitors and residents alike.

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

1. The Grant Award and Agreement between the U.S. Department of Transportation and the Duluth Airport Authority, Acting for the Community of Duluth, Minnesota, Under the Small Community Air Service Development Program, is attached hereto and incorporated by reference into this Agreement as Exhibit A.

2. City will provide to the DAA an amount not to exceed Fifty Thousand and 00/100 Dollars (\$50,000.00) in year 2022, and an amount not to exceed Fifty Thousand and 00/100 Dollars (\$50,000.00) in year 2023, payable from 258-030-5436-12. Funds will be disbursed as requested by an authorized representative of the DAA subject to approval by the City's Finance Director. DAA is required to provide the City's Finance Director a financial report of activities funded by this agreement. It is understood and agreed that the City shall be obligated to provide payment to the DAA only to the extent that sufficient taxes are derived from the Lodging Tax and Food and Beverage Tax, which are designated by the City Council to be placed in Fund 258 and related funds and accounts. In the event that insufficient taxes are derived from said taxes, the City shall have the right in its sole and unfettered discretion to reduce or eliminate the funding available to the DAA under this Agreement or to terminate or otherwise modify this Agreement.

3. Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and the DAA only upon being reduced to writing and signed by a duly authorized representative of each party.

4. Records and Inspection. Records shall be maintained by the DAA in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years. The City and its duly authorized representative shall have access to the books, documents, papers and records of the DAA that are related to this Agreement.

5. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the DAA as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. The DAA and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of the DAA's employees while so engaged, and any and all

claims whatsoever on behalf of the DAA's employees arising out of employment shall in no way be the responsibility of City. The DAA's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless the DAA from liability or judgments arising out of the acts or omissions of the DAA or its employees while performing the work specified by this Agreement.

6. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

7. The DAA shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the DAA's breach of this Agreement. This Section shall survive the termination of this Agreement for any reason.

8. The DAA, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

9. The DAA agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

10. 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.

11. Notice to City or the DAA provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

To City of Duluth: City of Duluth
 Room 402 City Hall
 411 West First Street
 Duluth, MN 55802

To DAA: Duluth Airport Authority
 Attn: Tom Werner
 Executive Director
 4701 Grinden Drive
 Duluth, MN 55811

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

13. The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party will not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

14. It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment 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.

15. This Agreement may be amended only by a written instrument signed by both parties.

This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

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

CITY OF DULUTH-

DULUTH AIRPORT AUTHORITY

By _____
Mayor

By 
Craig Fellman, Board President

Attest:

By Jeffery D. Anderson
Jeffery D. Anderson (Feb 15, 2022 11:51 CST)
Jeff Anderson, Board Secretary

City Clerk

Date: 2-15-22

Date Attested: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney



2022.02.08 DAA City of Duluth Denver Air Service Grant Funding Agreement -

Final Audit Report

2022-02-15

Created:	2022-02-15
By:	Mary Ann Wittkop (mwittkop@duluthairport.com)
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-  Document created by Mary Ann Wittkop (mwittkop@duluthairport.com)
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-  Document emailed to Jeffery D. Anderson (jeff@jeffanderson.org) for signature
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-  Document e-signed by Jeffery D. Anderson (jeff@jeffanderson.org)
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-  Agreement completed.
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