

**AGREEMENT
BY AND BETWEEN**

**DULUTH ECONOMIC DEVELOPMENT AUTHORITY
AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation hereto by the City Clerk (the “Effective Date”), by and between the **City of Duluth**, a municipal corporation under the laws of the state of Minnesota, (“City”) and the **Duluth Economic Development Authority**, a public body, corporate and politic and political subdivision organized under the laws of the State of Minnesota (“DEDA”).

WHEREAS, City Council approved the targeted allocation of Five Hundred Thousand and No/100 Dollars (\$500,000.00) to support economic revitalization efforts by the DEDA; and

WHEREAS, this Agreement is intended to memorialize the grant to the DEDA approved by Resolution _____; and

WHEREAS, DEDA is able and willing to utilize the grant funds to make loans and grants in accordance with its Bylaws, the terms and conditions of this Agreement, and the requirements of state law related to economic development authorities.

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

1. **Grant to DEDA.** City hereby agrees to grant to the DEDA the amount of up to Five Hundred Thousand and No/100 Dollars (\$500,000.00) (“Grant”), payable from City Fund No. _____ to be used by DEDA in accordance with the terms and conditions hereinafter set forth.

2. **Use of Grant Fund.** The DEDA shall utilize the Grant Fund to provide the following forms of assistance to qualified parties as authorized by its Bylaws as they are now in existence or are amended from time to time:

2.1. Loans and other forms of assistance to eligible entities for economic development as authorized by the DEDA Bylaws.

2.2 A program to provide for business marketing in support of Covid-19 recovery.

2.3 Programs providing grants, loan and programmatic services in support of economic development and community reinvestment throughout the City, focused on expansion of the city’s employment base and total level of business activity.

3. **Reporting.** DEDA will provide regular reports to the City which will include a description of activities of the DEDA funded by the Grant.

4. **General Terms and Conditions.**

4.1. **Amendments.** Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and DEDA only upon being reduced to writing and approved with the same formality as the approval of this Agreement.

4.2. **Assignment.** DEDA agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City.

5. Data and Confidentiality, Records and Inspection.

5.1. DEDA must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by DEDA under this Agreement. DEDA agrees to hold City, its officers, and employees harmless from any claims resulting from DEDA's failure to comply with this law. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by DEDA. If DEDA receives a request to release the data referred to in this clause, DEDA must immediately notify City and consult with City as to how DEDA should respond to the request. DEDA's response to the request must comply with applicable law.

5.2. Records shall be maintained by DEDA in accordance with requirements prescribed by the City and Generally Accepted Accounting Principles ("GAAP") and 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.

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

5.4. DEDA shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.

5.5. DEDA shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. DEDA will also permit the City 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.

6. DEDA Representation and Warranties. DEDA represents and warrants that:

6.1. DEDA shall perform its duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.

6.2. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the DEDA is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the DEDA contrary to the terms of any instrument or agreement.

6.3. There is no litigation pending or to the best of the DEDA's knowledge threatened against the DEDA affecting its ability to carry out the terms of this Agreement or its ability to carry out the terms and conditions of any other matter materially affecting the ability of the DEDA to perform its obligations hereunder.

6.4. The DEDA will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

7. **Agreement Period.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated by either party upon thirty (30) days written notice to the other party.

8. **Defaults and Remedies.**

8.1. **General Events of Default.** The following shall be deemed to be general events of default by DEDA under the terms and conditions of this Agreement to which the remedies set forth in Section 11.1.2 below shall be applicable except as otherwise set forth in this Agreement.

8.1.1. DEDA shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of DEDA pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to DEDA of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

8.1.2. DEDA makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to DEDA or its business; or DEDA files a petition of bankruptcy or files a petition seeking any reorganization, dissolution,

liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or DEDA files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of DEDA's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of DEDA of any trustee, receiver or liquidator of any material part of DEDA's properties.

8.2. General Remedies.

8.2.1. Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by DEDA:

8.2.2. Seek and be entitled to monetary damages from DEDA for any damages incurred by City as a result of DEDA's default.

8.2.3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent DEDA's violation of the terms and conditions of this Agreement or to compel DEDA's performance of its obligations hereunder.

8.2.4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

9. **Notices.** Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

If to City: City of Duluth
 411 W First Street
 City Hall Room 418
 Duluth MN 55802
 Attn: Director of Planning and Economic Development

If to DEDA: Duluth Economic Development Authority
 411 W First Street
 City Hall Room 418
 Duluth MN 55802

10. **Civil Rights Assurances.** DEDA, as part of the consideration under this Agreement, does hereby covenant and agree that:

10.1. 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.

10.2. 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.

11. **Laws, Rules and Regulations.** DEDA 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 of Duluth with respect to their respective agencies which are applicable to its activities under this Agreement.

12. **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. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

13. **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.

14. **Entire Agreement.** 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.

15. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

City of Duluth,
A Minnesota municipal corporation

Duluth Economic Development Authority,
An Economic Development Authority under
Minn. Stat. 469

By _____
Emily Larson, Its Mayor

By _____
Its President

Attest:

Ian B. Johnson, its City Clerk

Approved:

Countersigned:

City Attorney

City Auditor