

FINANCE COMMITTEE

12-0247R

REPLACEMENT

RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF \$7,650,000 TAXABLE GENERAL OBLIGATION AIRPORT IMPROVEMENT BONDS, SERIES 2012B; ESTABLISHING THE TERMS AND FORM THEREOF; CREATING A BOND FUND THEREFOR; AND AWARDING THE SALE THEREOF.

CITY PROPOSAL:

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

Section 1. Bond Purpose and Authorization.

1.01 A. Under and pursuant to the provisions of Minnesota Laws 1974, Chapter 130, Minnesota Statutes, Chapter 475 and all other enabling statutes, the City is authorized to issue its general obligation bonds to provide the funds necessary to match state, private and federal grants for projects within the City's boundaries, which bonds are to be payable from annual ad valorem taxes or other revenues of the City.

B. The city council has, by Ordinance No. 10112 adopted October 10, 2011, authorized the issuance and sale of general obligation bonds of the City in the maximum amount of \$7,650,000 for the purpose of providing the local match for State of Minnesota grants and federal grants for the construction of a new terminal facility at the Duluth International Airport, including a new parking ramp, access road and aprons (the "Project").

C. Pursuant to the authority herein recited, the City authorizes and directs the issuance and sale of \$7,650,000 Taxable General Obligation Airport Improvement Bonds, Series 2012B, to be dated the date of delivery as the date of original issue (the "Bonds") for financing the Project.

1.02 Public Financial Management, Inc., financial consultant to the City, has given notification to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds.

1.03 Pursuant to such solicitation for bids for the sale of the Bonds, the

city council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Morgan Keegan & Co., Inc. of Memphis, Tennessee (the "Purchaser"), to purchase the Bonds at a cash price of \$7,623,345.62, and upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated the date of delivery as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate
2014	\$435,000	2.000%
2015	445,000	2.000%
2016	455,000	2.000%
2017	465,000	2.000%
2018	470,000	2.000%
2019	485,000	2.000%
2020	490,000	2.000%
2021	500,000	2.250%
2022	515,000	2.375%
2023	530,000	2.500%
2024	540,000	2.625%
2025	550,000	2.875%
2026	570,000	3.000%
2027	590,000	3.125%
2028	610,000	3.250%

2.02 A. The Bonds maturing in the years 2014 through 2022 shall not be subject to optional redemption and prepayment before maturity, but those maturing or subject to mandatory redemption pursuant to Section 2.01B, in the year 2023 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2022, and on any date thereafter, in whole or

in part, and if in part, in such order of maturities as selected by the City and by lot as to the Bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

B. In the event any of the Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) at least 30 days but not more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Bond Registrar; provided however, that so long as the Bonds are registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Representation Letter hereinafter described. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of Bonds not affected by such defect or failure. Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

C. If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"),

commencing February 1, 2013. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 A. The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

B. The city clerk is authorized and directed to obtain a copy of the approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as public document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 3.01 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed

authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 A. In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

B. Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

C. All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

D. DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and deliver, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form,

which shall be conclusive for all purposes whatsoever. Upon the authentication of any new bond in Book-Entry Form in exchange for a previous bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

E. The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

(i) with respect to notices of redemption; and

(ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

F. All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register

in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

Section 3. Form of the Bonds.

3.01 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

R- _____ \$ _____

CITY OF DULUTH
TAXABLE GENERAL OBLIGATION AIRPORT IMPROVEMENT BOND, SERIES 2012B

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, _____	May __, 2012	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above, on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on February 1, 2013. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the city council. The Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$7,650,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to the authority contained in Minnesota Laws 1974, Chapter 130, Minnesota Statutes, Chapter 475, and all other laws thereunto enabling, and Ordinance No. 10112 adopted by the governing body of the City on October 10, 2011, and pursuant to a resolution adopted by the governing body of the City on

May 10, 2012 (the "Resolution"), for the purpose of providing the local match for State of Minnesota grants and federal grants for the construction of a new terminal facility at the Duluth International Airport, including a new parking ramp, access road and aprons, and for payment of part of the interest cost of said bond issue, which obligations and interest thereon are payable from ad valorem taxes as described in the Resolution.

The Bonds of this series maturing in the years 2014 through 2022 are not subject to redemption before maturity, but those maturing in the year 2023 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2022, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City, and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

Not less than 30 nor more than 60 days prior to the date fixed for redemption and prepayment of any Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations executed by the City and DTC.

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and the Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto _____

(Name and Address of Assignee)

Social Security or Other
Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 4. Revenues, Accounts and Covenants.

4.01 The City has created the Bond Construction Account within the Duluth Airport Authority Fund (Fund No. 590), to which there shall be credited \$7,490,074.64 of the proceeds of the Bonds. The City also maintains a construction account within Fund No. 590, and any additional funds, including grant funds, available for the Project shall be deposited and used for costs of the Project. Monies within the Bond Construction Account shall be used to pay, or reimburse, expenses duly approved and

allowed, which, under generally accepted accounting principles, constitute capital expenditures for the Project and to pay the costs of issuance for the Bonds.

4.02 A. A separate debt service account is hereby created and designated as the "2012 Taxable General Obligation Airport Improvement Bonds Debt Service Account" (the "Debt Service Account") within the City's debt service fund. The money in the Debt Service Account shall be used for no purpose other than the payment of principal and interest on the portion of the Bonds; provided, however, that if any payment of principal or interest shall become due when there is not sufficient money in the Debt Service Account, the treasurer shall pay the same from any other funds of the City and said funds shall be reimbursed for such advance out of the proceeds of the taxes hereinafter levied when collected.

B. Into the Debt Service Account shall be credited (i) \$4,981.06 from the rounding amount; (ii) capitalized interest in the amount of \$128,289.92, and plus the amount of accrued interest, if any, paid by the Purchaser upon closing and delivery of the Bonds; (iii) the payments received by the City pursuant to Section 4.02C; (iv) the ad valorem taxes levied pursuant to Section 4.03; and (v) any other funds appropriated by the city council for payment of principal of and interest on the Bonds.

C. On or prior to delivery of the Bonds, the mayor and city clerk are hereby authorized and directed to execute on behalf of the City a loan agreement (the "Loan Agreement") with the Duluth Airport Authority (the "Authority") in substantially the form now on file with the city clerk as public document No. _____. The execution and delivery of the Loan Agreement by the mayor and the city clerk, in the form presented to the city council with such changes, omissions, insertions and revisions as the mayor deems advisable, is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. The City shall deposit the loan repayments by the Authority paid pursuant to the Loan Agreement in the Debt Service Account when received. The loan repayments shall offset the ad valorem tax levies as provided in Section 4.03A hereof.

4.03 A. The full faith and credit and taxing power of the City are hereby irrevocably pledged for the prompt and full payment of the principal of and interest

on the Bonds, as such principal and interest respectively become due. To provide monies for the payment of the principal and interest on the Bonds, there is hereby levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls and collected with and part of the other general property taxes of the City for the years and in the amounts as set forth as follows:

Levy Year	Collection Year	Tax Levy
2012	2013	\$653,081
2013	2014	654,446
2014	2015	655,601
2015	2016	656,546
2016	2017	652,031
2017	2018	657,911
2018	2019	652,976
2019	2020	653,186
2020	2021	657,123
2021	2022	660,031
2022	2023	656,618
2023	2024	652,234
2024	2025	656,631
2025	2026	659,676
2026	2027	661,317

Said levies are such that if collected in full they will produce at least five percent in excess of the amount needed to meet when due the principal and interest on the Bonds.

Such tax levies shall be irrevocable as long as any of the Bonds issued hereunder are outstanding and unpaid; provided, however, that in each year while any Bonds issued hereunder remain outstanding, the city council may reduce or cancel the above levies to the extent of an irrevocable appropriation to the Debt Service Account of monies actually on hand for payment of such principal and interest payable from ad valorem taxes, and may direct the county auditor to reduce the levy for such calendar year by that amount.

The City intends to credit the loan repayments from the Loan Agreement to the Debt Service Account to provide funds to cancel all or a portion of such tax levy.

B. All taxes are hereby appropriated and shall be paid when collected into the Debt Service Account. If the balance in the Debt Service Account is ever insufficient

to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Account when the balance therein is sufficient.

4.04 Proceeds of the Bonds on deposit in the Bond Construction Account and the Debt Service Account may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the Project and/or payment of the principal and interest on the Bonds when due.

Section 5. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the clerk.

Section 6. Certificate of Proceedings.

6.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds herein authorized have been duly entered on his register.

6.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating

to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 The officers of the City are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

FIN AH:le 05/03/2012

STATEMENT OF PURPOSE: This resolution establishes the terms and form and awards the sale of \$7,650,000 Taxable General Obligation Airport Improvement Bonds, Series 2012B, to Morgan Keegan & Co., Inc. at a true interest cost of 2.6730%. The proceeds of the Bonds will be used for the purpose of providing the local match for State of Minnesota grants and federal grants for the construction of a new terminal facility at the Duluth International Airport, including a new parking ramp, access road and aprons and for payment of costs of issuance of the Bonds.

Draft 4/11/2012

LOAN AGREEMENT

between

CITY OF DULUTH, MINNESOTA

and

DULUTH AIRPORT AUTHORITY

Dated as of May 24, 2012

Relating to:

**City of Duluth
\$7,650,000 Taxable General Obligation Airport Improvement Bonds
Series 2012B**

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LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") made as of May 24, 2012, by and between the CITY OF DULUTH, MINNESOTA, a home rule charter city and political subdivision of the State of Minnesota (the "City") and the DULUTH AIRPORT AUTHORITY, an authority created and existing under the Laws of Minnesota 1969, Chapter 577, as amended (the "Authority").

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Laws 1969, Chapter 577, as amended (the "Act"), to administer, promote, control, direct, manage and operate all airports of the City. The Authority is in the process of constructing a new terminal facility at the Duluth International Airport, including a new parking ramp, access road and aprons (the "Project"); and

WHEREAS, the City has received grants from the State of Minnesota in the amount of \$16,600,000 for the Project, and the Authority has received grants for the Project from the Federal Aviation Administration and TSA in the amount of \$48,088,363 and from the State of Minnesota in the amount of \$4,500,000; and

WHEREAS, the Authority needs additional matching funds in the amount of \$7,650,000 for completion of the Project, costs of issuance and capitalized interest; and

WHEREAS, the Authority has requested that the City issue its Taxable General Obligation Airport Improvement Bonds, Series 2012B, in the amount of \$7,650,000 (the "Bonds") and loan the proceeds thereof to provide the additional funds to complete the Project and provide for the costs of issuance of the Bonds and capitalized interest; and

WHEREAS, pursuant to Section 5, Subd. 2(f) and Section 9 of the Act, the Authority has the power and authority to obtain loans of money and enter into any agreement required in connection therewith and to issue revenue bonds for the financing of a project and to pledge revenues of the Authority for the payment thereof; and

WHEREAS, it is necessary and desirable for the City and the Authority to enter into this Agreement to set forth the terms and conditions of the Loan (as hereinafter defined).

NOW, THEREFORE, in the joint and mutual exercise of their powers and in consideration of mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I – Definitions and Rules of Construction

Section 1.1 Definitions. Unless the context otherwise requires, the terms in this Agreement shall, for all purposes of this Agreement, have the meaning hereinafter specified, unless the context clearly otherwise requires:

Bond Resolution: means the Resolution Authorizing the Issuance, Sale and Delivery of \$7,650,000 Taxable General Obligation Airport Improvement Bonds, Series 2012B, Establishing the Terms and Form Thereof, Creating a Debt Service Fund Therefor and Awarding the Sale Thereof, approved by the City Council on May 10, 2012.

Bond Year: means the 12 months closing on February 1 of each year commencing with the Bond Year closing on February 1, 2014.

Bonds: means the City of Duluth \$7,650,000 Taxable General Obligation Airport Improvement Bonds, Series 2012B, dated May 24, 2012, as the date of original issue.

CFC: means the Customer Facilities Charge imposed by the Authority on car rentals initiated at the Authority's facilities.

Debt Service Account: means the 2012 Airport Improvement Bonds Debt Service Account established for the Bonds within the City's debt service fund for general obligation bonds which shall be used to pay the principal of and interest on the Bonds.

General Revenues: means revenues of the Authority generated from Authority operations pursuant to the Act.

Loan Repayments: means the payments from the Authority to the City described in Section 3.2 hereof.

PFC: means the Passenger Facility Charge imposed by the Authority on airline tickets for passengers utilizing the Project.

Tax Levy: means the ad valorem tax levy to pay the principal of and interest on the Bonds as set forth in the Bond Resolution.

Section 1.2 Severability. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation, payment and performance of the Loan.

Section 1.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

ARTICLE II – Issuance of the Bonds

Section 2.1 Agreement to Issue Bonds. The City agrees to issue the Bonds and lend the proceeds to the Authority for payment of a portion of the costs of the Project, for capitalized interest, as hereinafter provided, and for the cost of issuance of the Bonds.

Section 2.2 Application of Bond Proceeds. The proceeds of the Bonds in the amount of \$7,650,000 shall be used for the following purposes and in the following amounts: (i) \$_____ shall be deposited in the Airport Construction Account as described in Section 2.3 hereof and shall be used for payment of costs of the Project; (ii) \$_____ shall be deposited in the Debt Service Account for payment of interest due on the Bonds on February 1, 2013; (iii) \$_____ shall be used for underwriter's discount; and (iv) \$_____ shall be used by the City for payment of costs of issuance of the Bonds. The City shall pay for the costs of issuance from the funds described in subparagraph (iv) above and as provided for in the Bond Resolution.

Section 2.3 Airport Construction Account. The City shall maintain an Airport Construction Account. The portion of the proceeds of the Bonds described in Section 2.2(i) shall be deposited in such account and shall be made to the Authority for payment of costs of the Project.

ARTICLE III – Loan Terms and Conditions

Section 3.1 The Loan. The City agrees, upon the terms and conditions in this Agreement, to lend to the Authority from the sale of the Bonds (the "Loan") \$7,650,000, for the uses of such proceeds as set forth in Section 2.2 hereof.

Section 3.2 Repayment of Loan. The Authority covenants and agrees to repay the Loan, together with interest thereon, in Loan Repayments which in the aggregate shall be in an amount sufficient to pay in full and when due, all of the principal of and interest on the Bonds. To provide for the repayment of the Loan hereunder, until the principal of and interest on the Bonds have been finally paid or provision for payment thereof shall have been made in accordance with the Bond Resolution, the Authority covenants and agrees to pay to the City the following amounts from PFC, CFC and General Revenues:

(a) On each December 1, commencing with December 1, 2012, the Authority shall deposit in the Debt Service Account for the Bonds maintained by the City the amount due on the Bonds during the next Bond Year; and

(b) On demand of the City, any additional costs incurred by the City in connection with the Bonds, including, but not limited to bond registrar fees and expenses.

The amount of the Loan Repayment due on each December 1 is set forth on Exhibit A hereto and the anticipated payments from PFC, CFC and General Revenues are set forth on Exhibits A-1, A-2 and A-3, respectively. If the funds generated by the PFC and CFC are ever insufficient to make such scheduled payments, the Authority shall nevertheless make the full Loan Repayment from General Revenues.

The Authority understands that the City has provided for the Tax Levy in the Bond Resolution and it can only cancel the Tax Levy if and to the extent funds are on deposit in the Debt Service Account prior to the date the City establishes its annual tax levy, which occurs on or about December 15 of each year.

Section 3.3 Prepayment of Loan. The Authority may prepay the Loan with the written consent of the City's Chief Administrative Officer and in connection with the prepayment and redemption of the Bonds as permitted by the Bond Resolution.

ARTICLE IV – Representations, Covenants and Warranties

Section 4.1 Representations, Covenants and Warranties of the City. The City represents, covenants and warrants as follows:

(a) The City is a duly formed and validly existing municipal corporation and political subdivision of the State, governed by the Constitution and laws of the State and its home rule charter.

(b) The officers of the City executing this Agreement have been duly authorized to execute and deliver this Agreement and perform its obligations hereunder pursuant to the terms and provisions of a resolution of the Council.

Section 4.2 Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants as follows:

(a) The Authority is a duly formed and validly existing authority of the City, governed by the Constitution and laws of the State, including the Act.

(b) The laws of the State authorize the Authority to enter into this Agreement and the transactions contemplated hereby, and to carry out its obligations hereunder, and that the Loan is a revenue obligation within the meaning of Section 5, Subd. 2(f) and Section 9 of the Act.

(c) The officers of the Authority executing this Agreement have been duly authorized to execute and deliver this Agreement and perform its obligations hereunder, pursuant to the terms and provisions of a resolution of the Board of Directors of the Authority adopted on April 17, 2012.

(d) The Authority will to the fullest possible extent join with the City in fulfilling the City's pledges set forth in the Bond Resolution.

(e) The Authority shall (i) keep the Project in good condition and repair, normal depreciation excepted; (ii) from time to time replace any worn, broken or defective portion thereof; (iii) promptly notify the City of any material loss of or material damage to the Project or of any material adverse change in the prospect of payment of any account, instrument and other right to payment constituting the CFC, PFC or General Revenues; and (iv) at the City Treasurer's office and Authority's chief executive office, keep accurate and complete records pertaining to the Authority's financial condition, business and property.

(f) The Authority shall exercise due care in the use, operation and maintenance of the Project, and shall not install, use, operate or maintain the Project improperly, carelessly, in violation of any state and federal law or for a purpose or in a

manner contrary to that contemplated by this Agreement or the Bond Resolution. The Authority shall comply with all state and federal laws applicable to the use, possession, management and operation of the Project, and if compliance with any such state and federal law requires changes or additions to be made to the Project, such changes or additions shall be made by the City at the Authority's expense.

ARTICLE V – Events of Default

Section 5.1 Enforcement of Covenants. Upon an Event of Default hereunder, the non-defaulting party may perform or observe such agreement and take any action which the non-defaulting party may deem necessary or desirable to cure or correct such failure.

Section 5.2 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default": any default in the payment or performance of any term of this Agreement by either party which continues after 30-days' written notice by the other party.

Section 5.3 Remedies. Upon the occurrence of any Event of Default and at any time thereafter, the non-defaulting party may exercise and enforce any and all rights and remedies available upon default under this Agreement and any other applicable agreements and laws.

Section 5.4 Notices on Default. If notice to the City or the Authority is required, such notice shall be deemed reasonably and properly given if mailed by regular or certified mail, postage prepaid, to the City or the Authority at the addresses stated in Section 6.2 of this Agreement at least 10 days prior to the action described in such notice.

ARTICLE VI – Miscellaneous

Section 6.1 Miscellaneous. A carbon, photographic or other reproduction of this Agreement is sufficient as a financing statement. This Agreement cannot be waived, modified, amended, abridged, supplemented, terminated or discharged except by a writing duly executed by the parties. A waiver shall be effective only when in writing and in the specific instance and for the specific purpose given. No delay or failure to act shall preclude the exercise or enforcement of any of the rights or remedies. All rights and remedies of the parties shall be cumulative and may be exercised singularly, concurrently or successively at the respective party's option, and the exercise or enforcement of any one such right or remedy shall not be a condition to or bar the exercise or enforcement of any other. This Agreement shall be binding upon and inure to the benefit of the City and the Authority and their respective successors and assigns and shall take effect when executed by the City and the Authority.

Section 6.2 Notices, etc. to City and Authority. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be communicated to or among the parties hereto shall be sufficient for every purpose hereunder if made, given or furnished in writing, and served upon such party or mailed with postage prepaid and addressed as follows:

If to the City:

Chief Administrative Officer
City Hall, Room 402
411 West First Street
Duluth, MN 55802

If to the Authority:

Executive Director
Duluth Airport Authority
4701 Grinden Drive
Duluth, MN 55811

(remainder of page left intentionally blank)

IN WITNESS WHEREOF, the duly authorized officers of the parties hereto affix their signatures, all as of the date first written above.

CITY OF DULUTH, MINNESOTA

Mayor

Attest:

Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney

DULUTH AIRPORT AUTHORITY

By _____
Its President

By _____
Its Secretary

Approved as to form:

Assistant City Attorney

EXHIBIT A

EXHIBIT A-1

EXHIBIT A-2

EXHIBIT A-3