

TARIFF REVENUE SHARING AGREEMENT

THIS AGREEMENT, effective as of the date of the last date of signature acknowledgement below (the “Effective Date”), by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, (“DEDA”), and the DULUTH ENTERTAINMENT AND CONVENTION CENTER AUTHORITY, an authority created and existing under the laws of Minnesota, 1963, Chapter 305 as amended by the laws of Minnesota, 1985, First Special Session Chapter 15, Section 36 and Laws of Minnesota, 1998, Chapter 404 (“DECC”).

WHEREAS, by special legislation, the State has created the DECC for the purpose of managing, operating, and leasing the DECC Facility to serve as a foundation for hospitality and tourism while also providing services that maximize local economic benefits; and

WHEREAS, DEDA's mission is to drive economic prosperity in the City of Duluth. DEDA accomplishes its mission by leading significant development initiatives, being a catalyst for sustainable development and redevelopment, and prudently investing unique resources that leverage other investments; and

WHEREAS, the DECC, in partnership with the City of Duluth and DEDA, share the goal of maintaining Duluth as the Minnesota and Lake Superior port of call for all cruise ships traveling the Great Lakes; and

WHEREAS, the DECC and its Facility has committed to serve as the local cruise facility, due to its location and capacity; and

WHEREAS, the DEDA has demonstrated its own commitment to cruising in Duluth by funding the crucial need to provide a solution for the dredging along the seawall in front of the DECC, which will allow for greater growth and expansion of Duluth’s Great Lakes Cruising market. Currently, no ships are able to dock directly alongside the DECC—limiting cruise lines and local availability. According to the 2021 BBER Cruising Study, full realization of Duluth as a cruising destination could see between \$3.1 million and \$8.1 million in economic benefit; and

WHEREAS, the DECC will charge a tariff on cruise passengers for each port call, pursuant to the DECC Tariff No. 0003, effective May 1, 2024 (the “Tariff”), as may be amended or replaced; and

WHEREAS, effective May 1, 2024, the DECC desires to enter into an agreement to allocate to DEDA a portion of the Tariff charged and collected in accordance with the terms of this agreement.

NOW THEREFORE, the parties agree to the following terms:

1. **Allocation.** During the term of this Agreement, and in consideration of DEDA’s part in funding the dredging project, the DECC allocates to DEDA the amount of \$9 per cruise passenger

from the DECC's revenues of tariff charges assessed to cruise lines using the DECC Facility (the "Tariff Revenue Share").

2. **Payments.** The payment of the Tariff Revenue Share shall be computed and paid to DEDA no later than ninety (90) days after each cruise vessel leaves the DECC Facility. The amount allocated to DEDA shall be used for dredging, dredging maintenance, and other cruising related expenses payable to Fund 860 DEDA Operating Fund. At the time of payment, the DECC shall deliver an accurate and complete written statement setting forth the DECC's calculation of the Tariff Revenue Share including the basis for gross revenues from tariff charges assessed on cruise lines and the number of cruise line passengers for each month.

3. **Term.** The term of this Agreement shall be deemed perpetual unless DEDA and the DECC mutually agree, as evidenced by resolutions of their respective Boards of Commissioners, that the allocation of this tariff is no longer necessary to accomplish the goals of this Agreement.

4. **Notices.** Communication and details concerning this Agreement must be direct to the following Agreement representatives:

DEDA: Duluth Economic Development Authority
411 W. 1st Street,
Duluth, MN 55802
Attn: DEDA Executive Director

DECC: The Duluth Entertainment and
Convention Center Authority
350 Harbor Drive
Duluth, MN 55802
Attn: Dan Hartman

5. **Reports to City.** The DECC shall be responsible for furnishing to DEDA such statements, records, data and information as DEDA may request pertaining to the matters covered by this Agreement. DECC shall provide to DEDA revenue reports and supporting documentation including all books, records, passenger logs, receipts.

6. **Establishment and Maintenance of Records.** Records shall be maintained by DECC in accordance with requirements prescribed by DEDA, in accordance with Generally Accepted Accounting Practices ("GAA") 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.

7. **Audits and Examination.** DECC shall ensure that at any time during normal business hours and as often as DEDA may deem necessary, there shall be made available to DEDA for examination its records with respect to the matter covered by this Agreement.

8. **Independent Contractor.** Nothing contained in this Agreement is intended to, or may be construed in any manner, as creating or establishing the relationship of co-partners, joint ventures, joint enterprise or employer/employee between the parties. The parties do not intend to create any third-party beneficiary to this Agreement. The DECC shall at all times remain an independent contractor with respect to the obligations to be performed under this Agreement. DEDA is exempt

from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because the DECC is an independent contractor.

9. **Lien to Secure Revenue Share Payment.** DEDA shall be entitled to and shall have a lien on DEDA's share of the Tariff to secure payment of the Tariff Revenue Share granted to DEDA under this Agreement. Such lien shall not operate to release the DECC, its agents or assigns, from its obligations and liability for payments due to DEDA under this Agreement. Such lien shall attach to DEDA's share of the Tariff collected by the DECC.

10. **Indemnity.** The DECC agrees that it shall defend, indemnify and save harmless DEDA from any claims for damages, demands, suits, judgments, costs and expenses arising out of any act or omission of the DECC, its officers, agents, servants, employees or contractors in the performance of its obligations under this Agreement.

11. **Assignability.** DECC may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of DEDA.

12. **Governing Law.** This Agreement will be governed by, and construed in accordance with, the laws of the State of Minnesota.

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

14. **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.

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.

16. **Entire Agreement.** It is understood and agreed that the entire agreement of this parties 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.

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

**DULUTH ECONOMIC DEVELOPMENT
AUTHORITY**

**DULUTH ENTERTAINMENT AND
CONVENTION CENTER AUTHORITY.**

By _____
Its President
Dated: _____

By _____
Its: _____
Dated: _____

By _____
Its Secretary
Dated: _____