

EXHIBIT A

AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into by and between the DULUTH ENTERTAINMENT CONVENTION CENTER AUTHORITY, an authority of the State of Minnesota, created and existing under laws of Minnesota, 1963, Chapter 305, as amended ("DECC"), and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (the "City"). The City and DECC are collectively referred to in this Agreement as the "Parties."

The Parties acknowledge the following:

A. DECC owns the *Steamship William A. Irvin* (the "Ship"), which has been docked in the City-owned portion of the Minnesota Slip located in the Canal Park neighborhood of the City for approximately 30 years pursuant to City Council Resolution 87-0563R and a verbal agreement between the City and DECC.

B. The City has undertaken, with the cooperation of DECC and various other parties: (i) the reconstruction of a portion of the seawall within the Minnesota Slip; (ii) to address contamination within the Minnesota Slip; and (iii) the installation of new electrical infrastructure and replacement of existing sidewalks adjacent to Minnesota Slip and a portion of Harbor Drive (collectively, the "Reconstruction Project").

C. In order to complete the Reconstruction Project, the Ship must be temporarily removed from Minnesota Slip, and the Parties wish to cooperate in regard to movement of the Ship.

D. While the Ship is moved out of Minnesota Slip, DECC may engage Fraser Shipyards, Inc. to perform certain painting and maintenance work on the Ship (the "Maintenance Project").

E. The City and DECC desire to enter into this Agreement to document the agreement of the Parties in relation to the temporary relocation of the Ship.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. GRANT AND CITY OBLIGATIONS.

A. Subject to the terms and conditions set forth in this Agreement, DECC grants the City permission to move the Ship according to the schedule set forth in Section 5 below. The City's obligations in relation to movement of the Ship shall include the following:

- i. provide complete project management services, including convening an expert technical working group to develop and implement the plan to move the Ship;

- ii. bid, hold and manage all contracts;
- iii. obtain all necessary permits and licenses;
- iv. pay for one-half of the Project Costs (defined below) to the extent the Project Costs do not exceed \$600,000;
- v. in the event the Project Costs exceed \$600,000, pay one hundred percent of the Project Costs in excess of \$600,000;
- vi. provide DECC copies of contracts and monthly updates on expenditures of Project Costs;
- vii. when the Project Costs have been fully incurred, submit an invoice to DECC for reimbursement of DECC's portion of the Project Costs; and
- viii. ensure that the insurance required by Section 8 of this Agreement is in place at all times when the Ship is being moved by the City pursuant to this Agreement.

B. The City will assist DECC in preparing and submitting a state historic preservation grant application for approximately \$300,000 to help finance the Maintenance Project (the "Grant Application"). Any funds obtained pursuant to the Grant Application shall be used solely for the Maintenance Project and will not be applied to the Project Costs. The City's assistance will include work by the City's grant writing consultant, cultural resources consultant and other staff of the City.

C. The City is not responsible for the condition of the Ship or for any repairs necessary to put the Ship into a condition that will allow it to be safely moved as contemplated by this Agreement.

2. DECC OBLIGATIONS. DECC's obligations in relation to movement of the Ship shall include the following:

- a. reimburse the City for one-half of the Project Costs, to the extent the Project Costs do not exceed \$600,000, with the understanding that the first \$169,000 of DECC's portion of the Project Costs will be paid out of the 3.0% Lodging Tax allocated to the Authority currently being held by the City in the DECC Revenue Fund (such amount equals the balance of the excess refinancing savings generated by the DECC AMSOIL Refunding Bonds). Under no circumstances shall the DECC's financial obligations for Project Costs exceed \$300,000;
- b. upon receipt of an invoice, promptly reimburse the City for the balance of the DECC's portion of the Project Costs in an amount not to exceed \$131,000;
- c. contract with Fraser Shipyards for overwintering dockage and any services the DECC Board shall authorize relating to the Maintenance Project. DECC shall be solely responsible for the costs associated with the overwinter dockage at Fraser Shipyards and any additional services related to the Maintenance Project; and
- d. cooperate with the City as necessary so that the City can satisfy its obligations under this Agreement.

3. TERM OF THE AGREEMENT. This Agreement shall commence on the date executed by the City and shall terminate at 12:00 p.m. (noon) on May 31, 2019, unless earlier terminated (the "Term").

4. PROJECT COSTS. The following expenses shall be included in the "Project Costs" to be shared by the Parties as set forth above:

- a. Movement of the Ship, including but not limited to (i) insurance and liability; and (ii) protection of the port infrastructure during movement of the Ship; and
- b. Design and permitting work, including but not limited to surveys, hull assessment, bid preparation, and cultural resources assessment.

The Project Costs shall not include (i) the cost of overwintering dockage for the Ship, (ii) any costs relating to the Maintenance Project, (iii) repairs necessary to get the Ship into a condition that will allow it to be moved, or (iv) expenses relating to work by any DECC employees.

Funds for payment of the Project Costs shall be in the following order:

- a. The first \$300,000 of Project Costs shall be paid from City funds;
- b. The next \$169,000 of Project Costs shall be paid from the DECC's portion funded with the 3.0% Lodging Tax described in Section 2a.;
- c. The next \$131,000 of Project Costs shall be paid from DECC funds; and
- d. All costs in excess of \$600,000 shall be paid from City funds.

5. PROJECT TIMELINES. The City shall undertake to move the Ship from Minnesota Slip, as hereinafter set forth. On or before September 30, 2018, and as weather conditions and schedules allow, the City shall move or cause to be moved the Ship to Fraser Shipyards, Inc.'s dry dock. DECC may complete the Maintenance Project once the Ship has been moved to Fraser Shipyards, Inc. and shall use its best efforts to ensure that any additional authorized maintenance work is complete by April 30, 2019, so that the City can move the Ship back into Minnesota Slip in early May, 2019. The City shall use its best efforts to return the Ship to Minnesota Slip in May, 2019. The Parties acknowledge and agree that the timelines stated in this Agreement are subject to change based on the coordination and schedules of the Reconstruction Project and the Maintenance Project, availability of contractors and consultants, weather patterns, governmental approvals, and other unknown contingencies.

6. THIRD PARTY APPROVALS AND PERMISSIONS. The City will use its best efforts to obtain all licenses, permits and third party approvals or agreements necessary for carrying out its obligations under this Agreement. DECC will cooperate as necessary to obtain all necessary licenses, permits and third party approvals or agreements. The obligations of the Parties under this Agreement shall be subject to and contingent on the Parties obtaining all necessary licenses, permits and third party approvals or agreements regarding movement of the Ship out of and back into the Minnesota Slip, including but not limited to permits and permissions from the U.S. Coast

Guard, the Minnesota State Historic Preservation Office, the U.S. Army Corps of Engineers and adjoining property owners.

7. HOLD HARMLESS. The City and DECC shall each be responsible for their own acts and the results thereof and shall not be responsible for the acts of the other party. The City's liability is governed by Minnesota Statutes Chapter 466 and other applicable law. DECC's liability is governed by Minnesota Statutes, Chapter 466, and other applicable law. The City shall not be liable for any and all claims, suits, loss, judgments, costs, damage, and expenses asserted by any person by reason of injury to or death of any and all persons, and including any and all damages to property to whomsoever belonging, that arise out of acts or failures to act during the time periods that the City is not in possession of the Ship, which shall include the period between the time that the Ship is delivered to Fraser Shipyards, Inc.'s facility and the time the City takes possession of the Ship to move it to Minnesota Slip. The City shall have no responsibility or liability for the Ship whatsoever during the above-described time period.

8. INSURANCE. The City shall obtain, or cause to be obtained, insurance coverages against risk of loss or damage to the Ship and any personal or real property and against claims which may arise or result from the movement of the Ship by the City pursuant to this Agreement, in form and substance acceptable to DECC in its reasonable discretion.

9. INDEPENDENT CONTRACTOR. It is agreed that nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the Parties or as constituting DECC or DECC's personnel as an agent, representative, or employee of the City for any purpose or in any manner whatsoever. DECC 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 DECC's employees or agents while so engaged shall in no way be the responsibility of the City.

10. LAWS, RULES AND REGULATIONS. The Parties shall conduct their respective activities pursuant to this Agreement in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, City of Duluth, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. The Parties shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination.

11. RECORDS RETENTION. DECC will maintain all books, records, documents, and other evidence pertaining to this Agreement for six (6) years after termination or expiration of this Agreement for any reason.

12. DATA PRACTICES. DECC shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this Agreement, and as it applies to all data created, collected, received,

stored, used, maintained or disseminated by DECC under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by DECC. If DECC receives a request to release the data referred to in this clause, DECC must immediately notify the City and consult with the City as to how DECC should respond to the request. DECC shall hold the City, its officers, and employees harmless from any claims resulting from DECC's unlawful disclosure or use of data protected under state and federal laws.

13. WAIVER. The waiver by the City or DECC of any breach of any term, covenant, or condition contained in this Agreement, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

14. SEVERABILITY. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, then the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

15. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the Parties regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which may be waived at any time by mutual agreement between the Parties.

16. NOTICES. Notices pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the Parties as follows:

City of Duluth	DECC
Attn: Director of Public Administration	Attn: Executive Director
411 W. First Street, Room 403	350 Harbor Drive
Duluth, Minnesota 55802	Duluth, Minnesota 55802

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

17. 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.

18. AMENDMENTS. Any amendments to this Agreement shall be in writing and shall be executed in the same manner as this Agreement.

19. AUTHORITY TO EXECUTE AGREEMENT. The Parties represent to each other that the execution of this Agreement has been duly and fully authorized by

their respective governing bodies or boards, that the individuals who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said individuals will constitute and be the binding obligation and agreement of the Parties in accordance with the terms and conditions of this Agreement.

20. ENTIRE AGREEMENT. This Agreement, including any exhibits, constitutes the entire agreement between the Parties and supersedes all prior written and oral agreements and negotiations between the Parties relating to the subject matter hereof. 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.

21. FORCE MAJURE. Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of nature, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

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IN WITNESS WHEREOF, the Parties have set their hands the day and date first shown below.

CITY OF DULUTH, MINNESOTA

DULUTH ENTERTAINMENT
CONVENTION CENTER AUTHORITY

By: _____
Mayor

By: _____
Its: DECC Board President

ATTEST:

City Clerk

Printed Name: _____

Dated: _____

Date Attested: _____

By: _____
Its: DECC Board Secretary

COUNTERSIGNED:

City Auditor

Printed Name: _____

Dated: _____

APPROVED AS TO FORM:

City Attorney