

**FUNDING AGREEMENT
BETWEEN
CITY OF DULUTH
AND
DULUTH ENTERTAINMENT AND CONVENTION
CENTER AUTHORITY**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (“Effective Date”), by and between the City of Duluth, a municipal corporation, (the “City”), 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, the DECC, the Duluth Amateur Hockey Association (DAHA), the Duluth Figure Skating Club (DFSC), and many other organizations rely on the DECC’s indoor ice facilities to operate programs, promote recreation, and drive tourism in the City of Duluth; and

WHEREAS, the permanent ice chiller used to create and maintain an indoor ice sheet at the DECC Arena has been failing for many years and this past season, the ice chiller completely failed and cannot be used; and

WHEREAS, a temporary ice chiller is necessary to create ice for the DECC Arena for the next three to five years; and

WHEREAS, the DECC will increase the ice time fees paid by various groups by \$25,000 per year to pay for a portion of the cost to maintain an ice sheet in the DECC Arena; and

WHEREAS, the City wishes to partner with the DECC and other groups by utilizing Revenue Replacement ARP funds to pay for a portion of the costs related to providing an ice sheet at the DECC Arena for the next three seasons; and

WHEREAS, the City desires to allocate Two Hundred Thousand dollars (\$200,000) towards the cost of a temporary chiller for the next three years.

NOW THEREFORE, the parties agree to the following terms:

I. Allocation. The City allocates to the DECC the amount of Two Hundred Thousand Dollars (\$200,000) for the DECC to utilize in purchasing and installing a temporary chiller to create the DECC’s ice sheet for the next three years. The amount allocated by the City shall be used exclusively for expenses associated with the purchase and installation of the DECC temporary ice chiller, payable from Fund 110-700-1450-5447

II. Time of Performance. The DECC shall use its best efforts to install the temporary ice chiller by December 31, 2023, and work towards a permanent ice sheet solution in the next three years.

III. Termination. The City may cancel this Agreement by giving 30 days' written Notice to the DECC.

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

City: City of Duluth
411 W. 1st Street, Room 402
Duluth, MN 55802
Attn: City Administrator

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

V. Reports to City. DECC shall be responsible for furnishing to the City such statements, records, data and information as the City may request pertaining to the matters covered by this Agreement. DECC shall provide to the City project costs and supporting documentation including invoices, paid receipts and lien waivers.

VI. Establishment and Maintenance of Records. Records shall be maintained by DECC in accordance with requirements prescribed by the City, in accordance with 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.

VII. Audits and Examination. DECC 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 its records with respect to the matter covered by this Agreement.

VIII. Non-Discrimination. DECC shall abide by all federal, state or local laws, statues, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to unlawful discrimination.

IX. 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. DECC shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because DECC is an independent contractor.

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

XI. Assignability. DECC may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of the City Administrator; provided, however, that DECC may contract with DECC-approved contractors, and further provided that claims for money due or to become due to DECC from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer must be furnished promptly to the City.

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

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

XIV. 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.

XV. 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.

[Remainder of this page intentionally left blank.]

XVI. 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.

CITY OF DULUTH

**DULUTH ENTERTAINMENT AND
CONVENTION CENTER AUTHORITY.**

By _____
Mayor

By _____

Attest:

Its: _____

City Clerk
Date Attested: _____

Countersigned:

City Auditor

As to form:

City Attorney