

EXHIBIT A

Draft 11/17/2017

PLEDGE AGREEMENT

between

CITY OF DULUTH, MINNESOTA

and

DULUTH ENTERTAINMENT AND CONVENTION CENTER AUTHORITY

Dated as of _____, 2018

Relating to:

**CITY OF DULUTH
GENERAL OBLIGATION DECC IMPROVEMENT BONDS
SERIES 2018__**

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THIS PLEDGE AGREEMENT (the “Agreement”) made as of _____, 2018, by and between the CITY OF DULUTH, a home rule charter city and political subdivision of the State of Minnesota (the “City”), and the DULUTH ENTERTAINMENT AND CONVENTION CENTER AUTHORITY, an authority of the City created by the Laws of Minnesota 1963, Chapter 305, as amended (the “Authority”).

W I T N E S S E T H:

WHEREAS, the Legislature of the State of Minnesota has created the Authority to administer, promote, control, direct, manage and operate the entertainment and convention center located with the City; and

WHEREAS, the DECC Area (as hereinafter defined) includes approximately one-half of the Minnesota Slip and the dock wall of the harbor; and

WHEREAS, the dock walls of Minnesota Slip and the harbor within the DECC Area are in need of repairs; and

WHEREAS, the Minnesota Pollution Control Agency (the “MPCA”) and the City have proposed a project (i) to repair the dock walls on the west and north sides of Minnesota Slip and a portion of the harbor dock wall (the “Phase I Project”), and (ii) to cap the contaminants in Minnesota Slip (the “Phase II Project”; the Phase I Project and the Phase II Project are collectively, the “Project”); and

WHEREAS, the City proposes to construct the Phase I Project, and the MPCA proposes to construct the Phase II Project; and

WHEREAS, the City has requested and the State of Minnesota, through the MPCA, has authorized a grant of at least \$2,155,660 (the “State Grant”) to provide a portion of the funds for the Phase I Project; and

WHEREAS, the State Grant requires a local match to construct the Phase I Project; and

WHEREAS, the City proposes to authorize the issuance of its \$_____ General Obligation DECC Improvement Bonds, Series 2018__ (the “2018 Bonds”) to provide approximately \$4,531,725 for costs of the Phase I Project; and

WHEREAS, the City has required, as a condition to issuing the 2018 Bonds, that the Authority pledge the DECC Lodging Tax (as hereinafter defined), subject to the pledge contained in the 2008 Pledge Agreement (as hereinafter defined), to the City to pay the debt service on the 2018 Bonds; and

WHEREAS, it is necessary and desirable for the City and the Authority to enter into this Agreement to provide for the pledge of the DECC Lodging Tax for payment of principal of and interest on the 2018 Bonds and to set forth the covenants and agreements regarding the operation of the DECC Facilities (as hereinafter defined); and

WHEREAS, the City and the Authority entered into a Pledge Agreement, dated as of August 7, 2008 (the “2008 Pledge Agreement”), relating to the City’s \$40,635,000 General Obligation DECC Improvement Bonds, Series 2008A, dated August 7, 2008 (the “2008 Bonds”), a portion of which was refinanced by the City’s \$33,470,000 General Obligation DECC Improvement Refunding Bonds, Series 2016A, dated March 22, 2016 (the “2016 Bonds”); and

WHEREAS, the 2008 Pledge Agreement secures both the 2008 Bonds and the 2016 Bonds; and

WHEREAS, the final outstanding maturity of principal and interest on the 2008 Bonds is February 1, 2018, and the final maturity of the 2016 Bonds is February 1, 2034, and the Authority’s obligations under the 2008 Pledge Agreement terminate with the final payment of the 2016 Bonds, or any bonds the proceeds of which refinanced the 2016 Bonds.

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 specified in the City’s Resolution No. 18-_____ authorizing the issuance of the 2018 Bonds, adopted _____, 2018 and the Certificate as to Terms of Bond Sale dated _____, 2018 (collectively, the “Bond Resolution”), unless the context clearly otherwise requires, and except as supplemented by this Section 1.1:

“2008 Bonds” shall mean the City’s \$40,635,000 General Obligation DECC Improvement Bonds, Series 2008A, dated August 7, 2008, and any bonds issued to refund the 2008 Bonds, including the 2016 Bonds.

“2016 Bonds” shall mean the City’s \$33,470,000 General Obligation DECC Improvement Refunding Bonds, Series 2016A, dated March 22, 2016, and any bonds issued to refund the 2016 Bonds.

“2018 Bonds” shall mean the City’s \$_____ General Obligation DECC Improvement Bonds, Series 2018__, dated _____, 2018, and any bonds issued to refund the 2018 Bonds.

“Debt Service Schedule” means the Debt Service Schedule for the 2018 Bonds set forth on **Exhibit B** hereto.

“DECC Act” shall mean Laws of Minnesota 1963, Chapter 305, as amended by Laws of Minnesota 1985, First Special Session, Chapter 15, Section 36, and Laws of Minnesota 1998, Chapter 404, Sections 61 through 70, as may be further amended from time to time.

“DECC Area” shall mean the tracts of land described on **Exhibit A** hereto, as from time to time amended or supplemented.

“DECC Facilities” shall mean all facilities of the entertainment and convention center operated on the DECC Area.

“DECC Lodging Tax” shall mean 65% of the Lodging Tax dedicated to be used for the support and maintenance of the Arena-Auditorium in Duluth (i.e. the DECC Facilities).

“DECC Revenue Fund” shall mean the City’s Fund No. 281.

“Event of Default” shall mean any of the occurrences specified in Section 4.2 hereof.

“Food and Beverage Tax” shall mean the sales tax imposed by the City on certain sales of food and beverages within the City pursuant to Minnesota Laws 1980, Chapter 511, Section 1, Subdivision 2 and Section 3, as amended, including Minnesota Laws 2008, Chapter 154, Article 5, Section 2, and Section 42A-2(b) of the Duluth City Code.

“Lodging Tax” shall mean the 3% excise tax on lodging within the City pursuant to Section 54(D) of the City Charter.

“MPCA” shall mean the Minnesota Pollution Control Agency.

“Phase I Project” shall mean the proposed project to repair the dock walls on the west and north sides of Minnesota Slip and a portion of the harbor dock wall.

“Phase II Project” shall mean the proposed project to cap the contaminants in Minnesota Slip.

“Project” shall mean the Phase I Project and the Phase II Project.

“State” shall mean the State of Minnesota.

“State Grant” shall mean the grant from the MPCA to the City pursuant to the Joint Powers Agreement dated _____, 201__, authorized in the amount of at least \$2,155,660 to assist in financing the Phase I Project.

“Term” shall mean the period during which this Agreement remains in effect as specified in Section 2.5.

“0.75% Food and Beverage Tax” shall mean the 0.75% of the Food and Beverage Tax, as authorized by Minnesota Laws 2008, Chapter 154, Article 5, Section 2 and Section 42.A-2(b) of the Duluth City Code, to pay a portion of the principal of and interest on the 2008 Bonds and the 2016 Bonds, but not the 2018 Bonds.

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 obligations herein.

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 – PLAN OF FINANCE FOR THE PROJECT; PLEDGE OF DECC LODGING TAX; CONSTRUCTION OF PROJECT

Section 2.1 Plan of Finance for the Project. The estimated cost of the Project is \$7,819,385. The Phase I Project is estimated to cost \$6,687,385. Not less than \$2,155,660 will be provided through the State Grant and approximately \$4,531,725 will be provided through the proceeds of the 2018 Bonds. The Phase II Project, to be constructed and paid for by the MPCA, is estimated to cost \$1,132,000. The plan for repayment of the principal of and interest on the 2018 Bonds anticipates utilizing DECC Lodging Taxes to pay the principal of and interest on the 2018 Bonds, subject to the prior pledge under the 2008 Pledge Agreement.

Section 2.2 Pledge of DECC Lodging Tax.

A. The Authority pledges the DECC Lodging Tax to the City, as needed, for payment of the principal of and interest on the 2018 Bonds, as hereinafter set forth, subject to maximum amount of DECC Lodging Tax per year set forth on **Exhibit C** hereto (the “Maximum Annual Pledge”). The City Treasurer shall withhold from transferring to the Authority the DECC Lodging Tax and deposit such receipts in the DECC Revenue Fund. The amount each year to be deposited into the DECC Revenue Fund shall be the sum of (i) the amount required under the 2008 Pledge Agreement, and (ii) the principal of and interest due on the 2018 Bonds necessary to cancel the debt service levy for the 2018 Bonds subject to the Maximum Annual Pledge. The City’s Chief Financial Officer may, in his or her discretion, authorize payment of the DECC Lodging Tax to the Authority at such time or times as the Chief Financial Officer is satisfied that the Authority’s obligation herein for such year will be satisfied.

B. The amounts in the DECC Revenue Fund are available for the following purposes: (i) payment (including prepayments) of all principal of and interest on the 2008 Bonds, the 2016 Bonds and the 2018 Bonds; (ii) reimbursement to the Authority for payments by the Authority in any year in excess of the sum of the amount of the “UMD Lease Revenue” plus the “Authority Contribution” set forth on Exhibit C to the 2008 Pledge Agreement; and (iii) payment of capital improvements to the DECC Facilities, at the request of the Authority and subject to approval of the City Council.

C. The 0.75% Food and Beverage Tax shall not be used to pay the principal or interest on the 2018 Bonds.

Section 2.3 Term. This Agreement shall remain in full force and effect so long as the 2018 Bonds or any refunding bonds remain outstanding.

ARTICLE III – MANAGEMENT AND OPERATION OF DECC FACILITIES; TAX COVENANTS

Section 3.1 Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants as follows:

A. The Authority shall (i) keep the DECC Facilities 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 DECC Facilities or of any material adverse change in the prospect of payment of any account, instrument and other right to payment constituting revenues to the Authority; (iv) keep accurate and complete records pertaining to the DECC Facilities’ financial condition, business and property, and submit to the City such periodic reports concerning the DECC Facilities’ financial condition, business and property as the City may from time to time request; (v) at all reasonable times permit the City and its representatives to examine, inspect and copy the Authority’s records pertaining to the Authority’s financial condition, business and property; and (vi) at the City’s request, promptly execute, endorse and deliver such instruments, documents and writings and take such other actions deemed by the City to be necessary or desirable to establish, protect, perfect or enforce the rights of the City under this Agreement and applicable law, and pay all costs of filing in all public offices where filing is deemed by the City to be necessary or desirable.

B. The Authority shall exercise due care in the use, operation and maintenance of the DECC Facilities, and shall not install, use, operate or maintain the DECC Facilities improperly, carelessly, in violation of any state or federal law or for a purpose or in a manner contrary to that contemplated by this Agreement. The Authority shall obtain all permits and licenses necessary for the operation, possession and use of the DECC Facilities. The Authority shall comply with all state and federal laws applicable to the use, possession, management and operation of the DECC Facilities, and if compliance with any such state or federal law requires changes or additions to be made to the DECC Facilities, such changes or additions shall be made by the Authority at its expense.

Section 3.2 Tax Covenants. In order to ensure that the interest on the 2018 Bonds shall at all times be excluded from gross income for purposes of federal income taxation, the Authority specifically represents, warrants and covenants with the City and all holders of the 2018 Bonds that:

A. It will fulfill all conditions specified in Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the “Code”) and applicable Treasury Regulations as necessary to maintain the tax-exempt status of the interest borne by the 2018 Bonds.

B. All of the property financed or otherwise provided by the net proceeds of the 2018 Bonds will be owned by governmental organizations.

C. The Authority has not leased, sold, assigned, granted or conveyed and will not lease, sell, assign, grant or convey all or any portion of the facilities financed by the 2018 Bonds

or any interest therein to the United States or any agency or instrumentality thereof within the meaning of Section 149(b) of the Code.

D. During the Term, the Authority will not take or permit any of their officers to take any action with respect to this Agreement or the portion of the DECC Facilities financed with the proceeds of the 2018 Bonds which would cause the interest on the 2018 Bonds to become includable in gross income under the Code, and will take all actions necessary to ensure that interest remains not includable in gross income under the Code insofar as they have the power and authority to take such actions.

E. Unless the Authority has received an opinion of Bond Counsel stating that such action will not adversely effect the tax-exempt status of the interest on the 2018 Bonds, the Authority shall not enter into any contract with a nongovernmental person for the management or operation of the DECC Facilities, or any part thereof.

F. The 2018 Bonds are not “private activity bonds” as defined in Section 141 of the Code and the Authority shall not use the DECC Facilities financed with the proceeds of the 2018 Bonds in a manner which will cause the 2018 Bonds to become “private activity bonds.”

G. The Authority will comply with and fulfill all other requirements and conditions of the Code and Treasury Regulations and rulings issued pursuant thereto relating to the acquisition, construction and operation of the facilities financed by the 2018 Bonds to the end that interest on the 2018 Bonds shall at all times be exempt from federal income taxation.

Section 3.3 Other Liens. The Authority may grant a purchase money lien in equipment purchased for the DECC Facilities after the date of this Agreement so long as no lien shall extend to or cover any property of the DECC Facilities other than the equipment so acquired or being acquired for the DECC Facilities.

ARTICLE IV – EVENTS OF DEFAULT

Section 4.1 Enforcement of Covenants. Upon an Event of Default hereunder, the City, in the name and on behalf of the Authority, or, at its option, in its own name, may perform or observe such agreement and take any action which the City may deem necessary or desirable to cure or correct such Event of Default. All of the City’s advances, charges, costs and expenses in connection with the 2018 Bonds and in the protection and exercise of any rights or remedies hereunder, including, without limitation, reasonable attorneys’ fees, shall be secured hereunder and shall be paid by the Authority to the City on demand.

Section 4.2 Events of Default. The occurrence of any of the following events shall constitute an “Event of Default”: (i) any default in the payment or performance of any of the obligations which continues after 10-days’ notice by the City; or (ii) any default under the terms of this Agreement which continues after 30-days’ notice by a party hereto.

Section 4.3 Remedies. Upon the occurrence of any Event of Default and at any time thereafter, the parties hereto may exercise any one or more of the following rights and remedies: (i) the City may declare all obligations hereunder to be immediately due and payable, and the same shall thereupon be immediately due and payable, without presentment or other notice or

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

Signature page for the Pledge Agreement between the City of Duluth, Minnesota and the Duluth Entertainment and Convention Center Authority dated as of _____, 2018, Relating to the City of Duluth General Obligation DECC Improvement Bonds, Series 2018__

DULUTH ENTERTAINMENT AND
CONVENTION CENTER AUTHORITY

President

Secretary

Signature page for the Pledge Agreement between the City of Duluth, Minnesota and the Duluth Entertainment and Convention Center Authority dated as of _____, 2018, Relating to the City of Duluth General Obligation DECC Improvement Bonds, Series 2018__

EXHIBIT A

DECC AREA

That part of Government Lot 3, Section 27, Township 50, Range 14, and those parts of Mungers Subdivision of Duluth, which lie within the following lines:

The east line of Fifth Avenue West

The south line of Railroad Street

A line parallel and 65 feet easterly of the west line of Minnesota Slip (which includes the USS Steamship "William A. Irvin")

The United States Government Harbor line

Subject to easements, conditions and restrictions of record.

EXHIBIT B

DEBT SERVICE SCHEDULE FOR THE 2018 BONDS

EXHIBIT C

**MAXIMUM ANNUAL AMOUNT OF DECC LODGING TAX
PLEGGED TO 2018 BONDS DEBT SERVICE**

Date of Transfer to 2018 Bonds Debt Service Fund (November)	Maximum Amount
2017	\$355,000.00
2018	\$356,437.50
2019	\$355,637.50
2020	\$355,725.00
2021	\$355,775.00
2022	\$357,975.00
2023	\$357,025.00
2024	\$355,725.00
2025	\$356,837.50
2026	\$354,900.00
2027	\$358,250.00
2028	\$355,500.00
2029	\$357,250.00
2030	\$358,250.00
2031	\$353,500.00
2032	\$358,250.00
2033	\$357,000.00