

Exhibit A

CONTRACT

(CONTRACTOR NAME) & CITY OF DULUTH

THIS AGREEMENT, made and entered into this day of August 2018, is by and between the **CITY OF DULUTH**, a municipal corporation, hereinafter referred to as the "CITY," party of the first part, , , hereinafter referred to as the "Contractor," party of the second part;

WITNESSETH: That the Contractor and the City agree as follows:

1. The following shall be deemed to be part of this contract:
 - a) The annexed resolution and legal advertisement of the City Council.
 - b) The Best Value Procurement Request for Proposals entitled "DEAD SHIP" TOWING TEMPORARY RELOCATION OF THE WILLIAM A. IRVIN, RFP NUMBER 18-10AA
 - c) The specifications entitled "TECHNICAL SPECIFICATIONS FOR: TEMPORARY RELOCATION OF THE WILLIAM A. IRVIN" prepared by AMI Consulting Engineers, P.A, AMI Project No. 181078 dated 6/19/2018 including all appendices referenced therein (the "Specifications"), except as modified by irreconcilable language in this written contract.
 - d) The bid by Contractor, as modified by irreconcilable language in this written contract.
 - e) The performance bond and payment bond certification.
 - f) All provisions of law applicable to a contract of this nature.

2. The Contractor agrees to prepare and develop a tow plan (the "Tow Plan") to cause the S.S. William A. Irvin (the "Ship") to be safely removed from Minnesota Slip in Downtown Duluth, its towing to Fraser Shipyard, its towing from Frazer Shipyard and its re-installation in Minnesota Slip including all mooring and reinstallation of utilities and facilities and structures related to its use as a museum ship, to secure the approval of the City and of all necessary permitting agencies having jurisdiction to approve the Tow Plan for such movements of the Ship and to secure all permits required for the Tow Plan from the appropriate permitting agencies. The Tow Plan shall conform to the requirements of the plans and specifications entitled "TECHNICAL SPECIFICATIONS FOR: TEMPORARY RELOCATION OF THE WILLIAM A. IRVIN" prepared by AMI Consulting Engineers, P.A, AMI Project No. 181078 dated 6/19/2018 including

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all appendices referenced therein, except as modified by irreconcilable language in this written contract.

The Contractor shall further furnish and deliver to the City Department of Public Administration all labor, supervision, material, equipment, supplies, insurance, performance bond, payment bond and everything else necessary for removal of the Ship from Minnesota Slip in Downtown Duluth, its towing to Fraser Shipyard, its towing from Frazer Shipyard and its re-installation in Minnesota Slip including all mooring and reinstallation of utilities and facilities and structures related to its use as a museum ship, all in strict accordance with plans and specifications entitled "TECHNICAL SPECIFICATIONS FOR: TEMPORARY RELOCATION OF THE WILLIAM A. IRVIN" prepared by AMI Consulting Engineers, P.A, AMI Project No. 181078 dated 6/19/2018 including all appendices referenced therein, except as modified by irreconcilable language in this written contract., your proposal of _____\$ (Vendor Proposal Amount) and Council Resolution No._____, passed _____ (Month/Day & Year of Resolution Passage).

3. The City agrees to pay to the Contractor when this Agreement shall be fully completed and fulfilled on the part of said Contractor to the satisfaction of the City, the sum of \$_____ (Proposal Dollar Amount) _____ (Spell Proposal Dollar Amount). Payments under this Agreement shall be made from the _____ (Fund Name/Number), _____ (Agency), _____ (Organization), _____ (Object), _____ (Project), _____ (Vendor Code), _____ (Requisition Number).

4. 4. The Contractor shall furnish and maintain in full force and effect until this contract is completely performed by the Contractor, a performance bond and payment in an amount equal to the Proposal amount.

5. 5. Inasmuch as this contract concerns work, materials and equipment needed for the public benefit, the provisions of this contract relating to the time of performance and completion of work and delivery of materials or equipment are of the essence of this contract.

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6. 6. The Contractor will defend, indemnify and save the City harmless from all costs, charges, damages, and loss of any kind that may grow out of the matter covered by this contract. Said obligation does not include indemnification of the City for claims of liability arising out of the sole negligent or intentional acts or omissions of City but shall include but not be limited to the obligation to defend, indemnify and save harmless the City in all cases where claims of liability against the City arise out of acts or omissions of City which are derivative of the negligence or intentional acts or omissions of Contractor such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and any other such source of liability. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this contract and to the work to be done and things to be supplied hereunder.

7. 7. Insurance

a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and City from all liability described in Paragraph 6 above, subject to provisions of Subparagraph f. below.

- (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
- (2) Public Liability and Automobile Liability (if applicable) Insurance with limits not less than **\$1,000,000** Single Limit plus an excess public liability insurance in the amount of an **additional \$1,000,000**, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- (3) City of Duluth shall be named as **Additional Insured** under the Public Liability, Excess/Umbrella Liability* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Contractor shall also provide evidence of Statutory Minnesota Workers Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types

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or limits of coverage are adequate to protect the Contractor's interests and liabilities.

**An excess policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured.*

- (4) Property insurance to protect against damage to, loss of or destruction of the Ship in the amount of not less than \$_____.
 - (5) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
 - c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Contract.
 - d. The City and the Duluth Entertainment and Convention Center Authority shall be named as additional insureds on each liability policy other than the workers' compensation policies of the Contractor.
 - e. The certificates shall provide that the policies shall not be changed or canceled during the life of this Contract without at least 30 days advanced notice being given to the City.
 - f. Contractor shall be required to provide insurance meeting the requirements of this Paragraph 7 unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City attorney may approve an alternative form

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of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City which is reasonably available.

8. 8. No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done, or omitted to be done, in connection with this contract. If this contract is not made in conformity with mandatory provisions of any statute or of the ordinances and charter of the City of Duluth, the Contractor agrees to raise no defense and make no claim against the City of the basis of ratification, laches, estoppel, or implied contract.

9. 9. The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or his right to execute it, or his right, title or interest in or to it, or any part thereof, or assign, by power of attorney, or otherwise, any of the moneys due or to become due under this contract, without the consent of the City, evidenced by a resolution duly adopted by the City Council.

10. 10. The Contractor agrees that in the hiring of common or skilled labor for the performance of any work under this contract, Contractor will not, by reason of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in local commissions, disability or age, discriminate against any person or persons who are citizens of the United States who are qualified and available to perform the work to which such employment relates.

11. 11. The Contractor agrees that Contractor shall not in any manner discriminate against or intimidate or prevent the employment of any person or persons, or on being hired, prevent or conspire to prevent any person or persons from the performance or work under this contract on account of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in local commissions, disability or age.

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12. 12. The contractor agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, contractor's books, records, documents, and accounting procedures and practices are subject to examination by the city or the state auditor for six years from the date of execution of this contract.

13. 13. This contract may be cancelled or terminated by the City, and all moneys due or to become due hereunder may be forfeited for a second or subsequent violation of the terms or conditions of Section 10 or 11 of this contract.

14. 14. This Agreement constitutes the entire agreement between the City and the Contractor on the subject matter hereof. It may not be changed, modified, discharged or extended except by written instrument duly executed on behalf of the City and the Contractor. The Contractor agrees that no representations or warranties made by the City shall be binding upon the City unless expressed in writing herein.

15. 15. This Agreement shall not be in force and effect, or in any way binding upon the City until the same shall have been approved by the Director of Department of Public Administration, signed by the Mayor, attested by the Clerk, and countersigned by the City Auditor.

16. 16. The Contractor unconditionally guarantees to perform all work pursuant to this contract in a good and workmanlike manner, in strict compliance with the specifications and instructions hereto attached, and to the satisfaction of the City of Duluth.

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AUTHORIZATIONS

Countersigned:

CITY OF DULUTH

City Auditor

By Mayor

Approved this ____ day of _____
(month), 2009

Attest City Clerk Date attested to:

Director, Department

CONTRACTOR

Approved this ____ day of _____
(month), 2009

By Contractor's Representative

Purchasing Agent

Representative's Printed Name/Title

Date: _____

Date: _____

Assistant City Attorney

Date: _____