

VENDING SERVICE LEASE AGREEMENT
BETWEEN THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND
LITTLE RED POPCORN WAGON, LLC.

THIS AGREEMENT, entered into this _____ day of _____, 2024, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and LITTLE RED POPCORN WAGON, LLC., a Minnesota limited liability company (“Vendor”) with offices at 3635 County Road 35 Barnum, Minnesota, 55707.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

1. **Term.** This Agreement shall be deemed to commence on the date this agreement is signed and shall continue through December 31, 2024, unless earlier terminated as provided for herein. DEDA’s Executive Director (the “Executive Director”) or Vendor may terminate the Agreement without cause prior to any Operating Season (as more specifically described below) by giving written notice of said termination to the other party on or before April 1 of the upcoming Operating Season.
2. **Administrative Fee.** Vendor shall pay to DEDA an administrative fee of Five-Hundred Dollars (\$500) for staff time invested in facilitating this transaction and managing this Agreement. Within thirty (30) days of signing this Agreement, Vendor agrees to pay the administrative fee to DEDA. If the administrative fee is not paid within the time required, this lease shall automatically terminate and Vendor shall have no rights under this Agreement.
3. **Vendor’s Services and Location.** During the Operating Season (as more specifically described below), Vendor shall have the right to sell coffee, popcorn, mini donuts, peanuts, cold and iced beverages, and snacks from a permitted food cart (the “Services”), at a location designated by DEDA’s Executive Director in the Lighthouse Lot. The Lighthouse Lot is legally described as follows:

All that part of Lots 270, 272, 274, 276, 278, 280, LAKE SHORE, UPPER DULUTH, lying easterly of the westerly line of St. Croix Avenue (as such west line is located by condemnation plat, filed November 24, 1896, in said Register of Deeds office, bearing Register's number 5764) and also lying between the prolongation of the southerly line of Lot 270, Lake Shore, on the south and the prolongation of the center line of Morse Street in said plat of Upper Duluth on the North, to the low watermark on Lake Superior, together with the riparian rights belonging to said lands and lots above

described.

The portion of the Lighthouse Lot currently designated for the Vendor consists of two parking spaces Lot as shaded in red on the attached Exhibit A (the "Leased Premises"). Vendor is taking the leased premises in an "as is" condition and DEDA has no obligation to make any improvements or alterations to the Leased Premises to prepare them for Vendor's use.

4. **Operating Season**. Vendor shall operate the Services on a regular daily basis from a minimum of May 23 through September 30, weather permitting (the "Operating Season"). Vendor may extend the Operating Season by one (1) month period on either side of the Operating Season if Vendor determines in good faith that the extension of Services will benefit both the seasonal tourists and Vendor's business. Any extension beyond the forgoing 1-month period must have the prior written approval of the Executive Director.

5. **Payment Terms**. In consideration for the license, the Vendor agrees to pay DEDA a sum equal to ten percent (10%) of gross receipts from Vendor's operation in the Lighthouse Lot, excluding retail sales taxes. Said sum shall be paid to DEDA by the 15th day of each month for the preceding month, and a monthly report of receipts shall be submitted on a form approved by the Auditor of the City of Duluth ("City") by the same date. All payments and monthly reports should be sent to:

DEDA
Attn: Executive Director
411 W. First Street, Room 418
Duluth, MN 55802

6. **Electricity**. Vendor shall reimburse DEDA for electricity used in the operation of the Services. The Vendor shall use the locking, metered outlet provided by DEDA and shall contact the Executive Director to have the meter read at the beginning and end of each year's operations. During the Operating Season, Vendor shall pay DEDA, in addition to the amount required under Paragraph 5, the sum of Fifty Dollars (\$50.00) per month toward the cost of this electrical usage. Payments due under this paragraph are payable on the 15th day of each month for the preceding month. At the end of each Operating Season after the final meter reading, the electrical cost shall be reconciled and the Vendor shall pay, or be refunded as the case may be, the difference between Vendor's monthly payments and actual cost of the electricity.

7. **Books and Records**. Vendor shall maintain adequate books and records relating to the operation of Vendor's permitted business in the Lighthouse Lot. The required books and records shall be available to DEDA for inspection and audit upon DEDA's request.

8. **Insurance Required.** Vendor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota:
- a. **Workers' Compensation Insurance.** Workers' compensation insurance in accordance with the laws of the State of Minnesota. Vendor shall provide to DEDA evidence of Statutory Minnesota Workers' Compensation Insurance.
 - b. **Commercial General Liability Insurance.** Commercial General Liability Insurance in accordance with Duluth City Code Section 27-21 for Vendor's mobile food cart and operations in coverage amounts not less than \$300,000 per occurrence and \$600,000 aggregate. DEDA shall be named as Additional Insured under the Commercial General Liability Policy.
 - c. **Certificates of Insurance and Noncancellation Provision.** Vendor shall provide to DEDA Certificates of Insurance for all insurance required evidencing coverage with notice to DEDA of cancellation in accordance with the provisions of the underlying insurance policy included.
 - d. **Disclaimer.** DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect Vendor's interests and liabilities.
9. **Indemnification.** To the fullest extent permitted by law, Vendor agrees that it shall indemnify and hold harmless DEDA, its officers, employees, and agents, past or present, from and against any and all claims including but not limited to claims for contribution or indemnity, demands, suits, judgments, costs, and expenses (including attorneys' fees

and incurred defense costs) asserted by itself or any person or persons including agents or employees of DEDA or Vendor by reason of death or injury to person or persons or the loss or damage to property to the extent attributable to, or by reason of, any act, omission, operation or work of Vendor or its employees while using the Leased Premises or while engaged in the vending activity allowed under this Agreement. Said obligations to indemnify and hold harmless shall include, but not be limited to the obligation to indemnify and hold harmless DEDA in all matters where claims of liability against DEDA that arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of Vendor, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Vendor, its employees, or its agents, and any other source of liability. Said obligations to indemnify and hold harmless shall be triggered upon the assertion of a claim for damages against DEDA. Vendor shall not be required to indemnify DEDA for amounts found by a fact finder to have arisen out of the sole negligent or intentional acts or omission of DEDA unless Vendor should fail to comply with its insurance obligations in this Agreement to the detriment of DEDA, in which case Vendor shall indemnify, defend, and hold harmless DEDA for any and all amounts except amounts attributed to intentional, willful or wanton acts of DEDA.

10. **Vendor's Rights Not Transferable.** Vendor shall not assign or transfer any of Vendor's rights or interest under this Agreement in any way whatsoever without the prior written consent of the Executive Director. Further, Vendor shall not assign any other person as being primarily responsible for the operation of the vending activity hereunder without the prior written consent of Executive Director.
11. **Vendor Responsible for Maintenance.** Vendor shall keep the Leased Premises in a neat, orderly condition and shall preform all necessary and proper cleaning. Vendor shall be responsible for providing trash receptacles or utilizing a trash receptacle provided by the City, and picking up litter within fifty (50) feet of Vendor's operation.
12. **Taxes.** Vendor shall promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and fees or taxes in lieu of real estate taxed as any time levied upon or against it or on the leased premises. Vendor shall further be obligated to pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date; provided that nothing shall prevent Vendor from contesting in good faith, any such contest would negatively affect DEDA's rights under this Agreement or result in a lien being placed on the Leased Premises.

13. **No Mortgage, Encumbrances, or Liens.** Vendor shall not create or permit any mortgage, encumbrance, or lien or allow any mechanic's or materialman's liens to be filed or established or to remain against the Leased Premises or any part thereof.
14. **Vendor's Employees** Any and all employees of Vendor or any other persons, while engaged in the performance of any service required by Vendor under this Agreement, shall not be considered employees of DEDA or the City of Duluth; and any and all claims that may or might arise under Workers' Compensation Act of the State of Minnesota on behalf of said employees or any other persons while so engaged, and any and all claims made by third parties as a consequence of any act of omission on the part of Vendor or its agents and employees, or any other persons, while so engaged in any of the Services provided herein, shall in no way be the obligation or responsibility of DEDA or the City of Duluth.
15. **Notice of Default.** Should the Vendor be in default under any terms and conditions of this Agreement, DEDA shall provide the Vendor with written notice of said conditions of default and shall allow the Vendor thirty (30) days within which to cure any defaults set forth herein. If the default is not cured within thirty (30) days, DEDA may immediately terminate this Agreement.
16. **Notices.** Notices to DEDA shall be sufficient if sent by regular United States Main, postage prepaid, addressed to DEDA at Room 402 City Hall, 411 West First Street, Duluth, Minnesota 55802; and notices to Vendor if sent by regular United States Mail, postage prepaid, addressed to Linda A. Loons, 3635 County Road 35, Barnum, Minnesota, 55707 or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.
17. **Removal at End of Operating Season.** The Vendor shall, within one (1) week after the end of the Operating Season or, in the event the Agreement is terminated earlier, within one (1) week of said termination, remove from the premises all Vendor property, goods and effects, and upon failure to do so, DEDA by its officers and agents may cause such removal to be made and said property, goods and effects to be stored at the cost and expense of the Vendor; and DEDA shall have a lien thereon for the cost and expense of such removal and the storage of such goods, property, and effects. Vendor property, goods and effects not claimed within thirty (30) days after the termination of this Agreement shall be deemed to have been abandoned to DEDA and the rights of Vendor to possession thereof shall cease.
18. **Compliance with Laws.** Vendor agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, City of

Duluth, and DEDA and their respective agencies which are applicable to its activities under this Agreement.

19. **Integration of Terms.** 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.
20. **Amendment.** 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.
21. **No General Waiver.** Any waiver by any party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.
22. **Entire Agreement.** This Agreement constitutes the entire Agreement between DEDA and Vendor and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

(Signature Pages Follow)

Exhibit A

