

Contract Routing Form

Date routing began: 12/15/2021

Number of copies attached for signature: 1

Vendor Name: Viking Expedition Ltd

*Current contract number: _____

*Needed if this is an amendment/change order

☒ _____ City Attorney (Rm 410)

☒ _____ Mayor (Rm 402)

☒ _____ City Clerk (Rm 330)

Resolution Number: _____

Number of certified resolutions needed: _____

_____ City Auditor (Rm 107)

Submitted by (return to): Noah Schuchman

Department: CAO Ext: 5370

Comments: _____

AUDITOR'S USE

CONTRACT NUMBER: _____

Amendment/Change Order Number: _____

**DULUTH CRUISE TERMINAL
FUNDING AGREEMENT
BETWEEN
CITY OF DULUTH AND VIKING EXPEDITION LTD**

THIS AGREEMENT is made effective as of the 14 day of December, 2021, between (1) the City of Duluth, a Minnesota municipal corporation ("City") and (2) Viking Expedition Ltd, a Bermuda corporation whose registered office is located at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda ("Viking") and (3) Duluth Entertainment Convention Center ("DECC") (together the "parties" and each a "party").

A. DECC will own and operate a passenger vessel cruise terminal ("**Duluth Cruise Terminal**") located at 350 Harbor Drive, Duluth, MN 55802.

B. Viking intends to operate passenger cruises on the Great Lakes, requiring United States Customs & Border Protection ("**CBP**") passenger clearance into US commerce at the Duluth Cruise Terminal beginning in the year 2022.

C. City, DECC, and Viking all desire to promote the establishment of the Duluth Cruise Terminal and a CBP passenger clearance facility ("**Passenger Clearance Facility**").

D. Viking will be one user of the Duluth Cruise Terminal and Passenger Clearance Facility, but will not retain sole rights to the facilities.

E. CBP requires the Passenger Clearance Facility to be prepared to their specifications at no cost to CBP. The City will have to fund construction and the DECC will need to fund operation of said Passenger Clearance Facility and provide to CBP at no charge.

F. City desires to solicit municipal bonding to fund, in part, said Passenger Clearance Facility and/or related improvements at the Duluth Cruise Terminal.

G. City desires for Viking to contribute financially to the establishment of the Passenger Clearance Facility and the Duluth Cruise Terminal before the City solicits said municipal bonding.

H. Viking is willing to provide financial compensation to City for such purpose in exchange for certain undertakings from DECC.

NOW, THEREFORE, City and Viking do mutually agree as follows:

1. Viking Obligations.

1.1. Financial Commitment. Viking will pay the City one-hundred fifty thousand dollars (\$150,000) (the "**Contribution**") by no later than 31 December 2021.

1.2. Recordkeeping. Viking will maintain appropriate records with respect to the activities performed by it under this Agreement and will make such materials available

at its office in Basel, Switzerland at all reasonable times for inspection by City and copies thereof shall be furnished to City upon request.

2. DECC Obligations.

2.1. Financial Incentives. In return for the payment of the Contribution, DECC will not charge Viking the customary \$5.00 per passenger construction fees for Duluth Cruise Terminal calls by Viking ships during the period beginning on January 1, 2022 through December 31, 2027.

Berthing Preference. City will provide Viking with reasonable, preferential berthing rights from January 1, 2023 through December 31, 2026 at Duluth Cruise Terminal so long as Viking advises DECC and reserves its planned port calls to the Duluth Cruise Terminal with DECC at least twenty-four (24) months ahead of the scheduled arrival date. If reservations at DECC are received with fewer than 18 months notice, the berthing preference will not apply.

2.2. Naming Rights. City and DECC will provide Viking with naming rights to the Passenger Clearance Facility once Viking ships start berthing at the Duluth Cruise Terminal through December 31, 2026. Any name selected by Viking is subject to City and DECC approval, which will not be unreasonably withheld.

3. **Data Practices Act.** The parties hereto acknowledge they are subject to the provisions of the Minnesota Government Data Practices Act. All parties must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by any party in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by any party in accordance with this Agreement. The civil remedies of Minnesota Statutes § 13.08, apply to all of the parties to this Agreement. The parties further recognize that other data protection rules and regulations may also apply and they each undertake to comply with such rules and regulations to the extent applicable to the parties as well as to passengers and crew travelling or working on board vessels operated by Viking which call at the Duluth Cruise Terminal.
4. **No Assignment.** The parties shall not assign, transfer, or delegate any of their rights or obligations under this Agreement.
5. **Termination:** Viking shall have the right to terminate this Agreement by notice in writing to the other parties hereto at any time prior to payment of the Contribution specified in Clause 1.1. If this Agreement is so terminated, no party shall have any liability whatsoever to the others hereunder and this Agreement shall terminate on the date specified in the notice. No party shall have the right to terminate this Agreement after payment of the Contribution.
6. **Confidentiality:** Except as required by law, none of the parties shall have the right to disclose the existence of this Agreement or any of its contents to any other party without the prior written consent of all of the parties hereto. Each party shall keep strictly confidential and not disclose to any third party any confidential information concerning the business, finances,

customers, clients or commercial operations of the other parties except with their express prior written consent.

7. **Governing Law:** This Agreement and any claim or dispute (including non-contractual disputes) arising hereunder shall be governed by and construed in accordance with Minnesota Law.
8. **Miscellaneous:** This Agreement constitutes the sole and complete agreement relating to the subject matter of this Agreement between the parties, superseding any and all other agreements between the parties and no verbal or other statements, inducements or representations have been made or relied upon by either party. No modifications hereof shall be binding upon either party unless in writing and properly executed.
9. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but which together shall constitute one and the same Agreement.
10. **No Partnership or Agency:** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party as the agent of another party or authorize any party to enter into any commitments for or on behalf of any other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

VIKING EXPEDITION LTD

By 

Jeff Dash
Director
Authorized Representative

CITY OF DULUTH

By 

Emily Larson, Its Mayor

Attest:


Chelsea Helmer, Its City Clerk

Countersigned:

Josh Bailey, Auditor

Approved as to form:


Rebecca St. George, City Attorney

**DULUTH ENTERTAINMENT AND
CONVENTION CENTER AUTHORITY**

By _____
Dan Hartman, Executive Director