PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

10-0621R

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY (DEDA) RELATING TO PARTICIPATION BY DEDA IN THE CITY OF DULUTH SELF INSURANCE FUND PROGRAM FOR 2011.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with DEDA, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, which allows DEDA to participate in the city's self insurance fund program during 2011; DEDA funds in the amount of $6,500 to be deposited into self insurance fund 610-036-1656-4904.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

DEDA JC:bl 12/02/2010

STATEMENT OF PURPOSE: This resolution approves an agreement with DEDA which sets forth the terms and conditions of its participation in the city's self insurance fund for general liability coverage during 2011. The charge to DEDA for such liability coverage will be $6,500, which is the same amount as in previous years.

AGREEMENT REGARDING DEDA'S PARTICIPATION IN THE
CITY'S SELF INSURANCE FUND PROGRAM
Pertaining to Tort Liability for Calendar Year 2011

This Agreement is by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY (Authority), and the CITY OF DULUTH (City), with regard to the arrangement between the parties for the accounting for, processing, and payment of claims for damages resulting from events that call into question Authority's contingent liabilities.

It is the intention of the parties that Authority shall participate in the City of Duluth Self Insurance Fund Program to the extent indicated herein. Participation in the plan does not indicate furnishing of insurance.

The term of this Agreement shall be the period commencing January 1, 2011, and ending December 31, 2011, unless earlier terminated by a party, or operation of law.

A. GENERAL LIABILITY COVERAGE

1. The Self Insurance Fund shall indemnify Authority for and defend Authority against all losses and damages suffered by third parties for which loss or damage Authority is liable because of the following legal liabilities:

a. Those liabilities described in Minnesota Statutes, Section 466.02, as limited by any other provision of law, including Minnesota Statutes, Sections 466.03, 466.04 and 466.05.

b. Those liabilities arising under the Minnesota Human Rights Act or any federal civil rights act, so long as the claimant is not an employee or agent of Authority, nor any entity or party claiming through such employee or agent, whether by way of assignment, subrogation, or otherwise.

2. The Self Insurance Fund shall have no obligation to indemnify Authority for or defend Authority against any claim arising in whole or in part from any of the following:

a. An enforcement action of any government agency, which action is

based upon noncompliance with any law or regulation.

b. Any activity related to labor relations, collective bargaining, picketing, terms or conditions of employment, selection or retention of personnel, wage and hour regulations.

c. Any intentional tort or intentional act.

d. Any claim of damage to the earth or the environment, or for violation of an environmental law or standard, unless the basis of the claim is a sudden and accidental discharge that occurred because of the act or omission of Authority or its agents while either was in control of the discharged substance.

e. Any war, civil unrest, riot, act of God, natural disaster, force majeure, or act of the county, state, or federal government.

3. It is the intention of each of the parties to preserve for its benefit each limitation of liability, immunity, notice requirement or other advantage set out in Minnesota Statutes, Chapter 466, or otherwise provided by law. In no event shall the Fund's obligation to indemnify exceed the limits of liability set out in Minnesota Statutes, Chapter 466, even if the claim is not one to which those liability limits apply. The Authority's participation in the City's Self Insurance Fund Program under this Agreement shall be limited to claims made against the Authority relating to events that occur during the term of this Agreement, and are fully reported, in writing, to the City claims adjuster while this Agreement is in effect, or within six years after its termination.

Authority shall fully cooperate in the City's reasonable loss control instructions, investigation and processing of claims, and defense of lawsuits. City may require Authority to use City's loss control program, including scheduled inspections. Authority shall utilize the City's claims adjusting program. Claims shall be promptly reported to the City's claims adjuster for processing. Failure to comply with the requirement is grounds for termination of this Agreement. If a claim against Authority proceeds to a lawsuit, City shall determine the lawyer to defend the case. Authority shall pay the reasonable costs of defense, including attorneys' fees.

B. <u>PAYMENT BY AUTHORITY</u>.

In order to record the agreed upon value of liability plan participation, reimburse for services, and build a fund for payment of future losses, the Authority shall transfer to the City's Self Insurance Fund No. 610-036-1656-4904 the amount of $6,500 payable from DEDA Fund 0860, Org. 8640, Obj. 5361. At the conclusion of the year, City shall report the amounts spent on Authority that year.

C. AMENDMENT

This Agreement shall be amended only by written instrument, dated and executed by an authorized representative of each party, or one whose act is duly ratified by the party.

CITY OF DULUTH

By_____
Mayor

Attest:_____
City Clerk

Countersigned:

_____
City Auditor

Approved as to form:

_____
City Attorney

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

By_____
President

By_____
Secretary