

COMMITTEE OF THE WHOLE

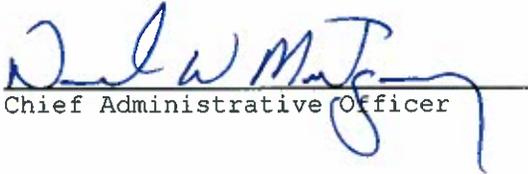
10-0635R

RESOLUTION AUTHORIZING A PARKING RAMP MANAGEMENT
CONTRACT WITH FOND DU LAC BAND FOR CASINO RAMP IN THE
AMOUNT OF \$185,000 PER YEAR FOR THREE YEARS.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into an agreement, substantially the same as that on file with the clerk as Public Document No. _____, between the city and Fond du Lac Band of Lake Superior Chippewa for operation of a parking concession at the parking ramp adjacent to the Fond du Luth Casino for years 2011, 2012 and 2013 for a fee of \$185,000 per year from Parking Fund 505-015-1480-2511-5307.

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

ADM/ATTY GBJ:blj 12/8/2010

STATEMENT OF PURPOSE: Currently, the city operates its parking ramp next to the casino on a limited time basis. Because the casino operates 24 hours per day, some who use the ramp do not pay. By entering into this arrangement with FDL, the revenues from the ramp should increase. The city will not lay off ramp workers as a result of this arrangement. The parties will confer after the first of the year to decide if changes to the contract are in order.

**MANAGEMENT AGREEMENT
PARKING RAMP**

Parties to this Agreement are CITY OF DULUTH (City) and FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA (FDL).

The parties acknowledge the following:

A. City is the owner of a parking ramp (Ramp) located at 125 East Superior Street, which Ramp is adjacent to a property occupied and operated by FDL which contains a gaming casino. A diagram and legal description of the Ramp are attached as Exhibit A.

B. FDL has an interest in operation of the Ramp so that parking space is available for those who visit FDL's property.

In consideration of their mutual promises, the parties agree as follows:

1. FDL will manage and operate the Ramp as set out in this Agreement. The hours of operation shall be 24 hours per day or any hours the casino is in operation. A Ramp attendant or security personnel shall be on the premises during hours of operation.

2. The term of this Agreement is three years, commencing January 1, 2011, and ending December 31, 2013, unless terminated earlier as provided for herein. Either party may terminate this Agreement without cause and without penalty, by giving to the other sixty (60) days' written notice of termination. Upon termination of this Agreement, FDL will leave the Ramp in at least as good a condition as it was in at the time this Agreement went into effect, except for ordinary wear and tear. FDL shall return to City, no later than the day of termination, any property of City's in its possession and any records needed or requested by City. Any items, property, fixtures or improvements of FDL that are left on the premises after termination shall, at no cost to City, become the property of City after sixty (60) days. FDL shall be responsible for any damage or loss to City arising out of FDL's operations under this Agreement.

3. FDL Shall hire, train, manage, supervise, and equip the personnel needed to operate and maintain the Ramp. FDL shall pay all the cost of compensating the employees. The employees shall not be employees, agents, or shared employees of City.

4. FDL shall operate a system of collecting the fees as applicable, including monthly, due to City for each customer that uses the Ramp, as set forth in the Fee Schedule attached as Exhibit B. The City shall provide a computerized ticket system, which shall be capable of accurately recording and collecting each and every amount due, and a video surveillance system capable of multiple views and the recording of the views. FDL shall be responsible for day-to-day maintenance of the systems, and the City shall be responsible for repair or replacement of the systems. Revenue shall be handled, processed, and accounted for through a bank designated by FDL in a manner approved by the City finance director. All revenue collected shall be turned over to the City at intervals no longer than seven (7) days, and to the person or account designated by the City finance director. FDL shall produce and furnish to City financial and vehicle count records as required by the City finance director.

5. FDL will perform daily cleaning and maintenance as shown on attached Exhibit B.

6. The City shall reimburse FDL for the reasonable cost of products, supplies or services reasonably necessary for maintenance of the Ramp, including light bulbs, parking tickets, stripe painting, sweeping of the Ramp, and maintenance of the elevator.

7. After conferring with FDL, City shall set the rates charged for parking or other use of the Ramp. The rates must be reasonable, suitable for FDL's operation on adjacent property and reasonably related to the area market.

8. FDL's performance of this contract shall be in conformance with standards set out in this Agreement and its exhibits.

9. As compensation for FDL's satisfactory performance of this Agreement, City shall pay FDL \$185,000 each calendar year. Payment shall be made monthly, on or before the 15th day of the month following that in which the service was performed. Each payment shall be in the amount of \$15,406.67. Payment shall be from City Parking Fund No. 505.

10. FDL shall not make alterations, improvements, decorate, or post signs without prior written approval of City.

11. FDL Shall not assign or transfer its rights or obligations under this Agreement without the prior written authorization of City.

12. Records shall be maintained by FDL with respect to the services provided under this Agreement. Such records shall be maintained and available for inspection by the City representatives for six (6) years following completion of FDL's services under the Agreement. Such records shall include a record of costs supported by payrolls, time records, invoices, contracts, vouchers, and other documentation evidencing charges incurred by FDL in the provision of services under this Agreement. FDL shall also provide on request by the City during normal business hours such statements, summaries and information as may assist the City in determining performance under this Agreement. The City may also audit, examine or make excerpts for transcripts from records in FDL's possession with respect to services provided under this Agreement.

13. FDL agrees that it will defend, indemnify and hold harmless, the City and its officers, agents and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons including agents of the City or of FDL, by

reason of death or injury of any person or persons or the loss or damage to property arising out of FDL's performance of obligations under this Agreement. On ten (10) days' written notice from the City, FDL will appear and defend all lawsuits against the City arising out of such death, injuries or damages. FDL's obligation shall only extend to the proportion of damage directly caused by its proportion of fault.

Towards its defense and indemnification obligations under this section, FDL will provide certificates of insurance prior to the time of execution of the Agreement, with evidence to the City that it has obtained insurance in the following minimum amounts, from insurance companies authorized to do business in the State of Minnesota, with the City named as an additional insured on the liability policies: When using the "Accord" Certificate form cancellation provisions, the words "endeavor to" on Line 2 must be deleted. As an additional insured under the contract, the City of Duluth has contractual rights for exceeding that of a certificate holder. There, additional named insured endorsement shall read as follows: This policy insures the named insured and the City of Duluth and will be primary and not contributory with City of Duluth coverage. The City of Duluth is an additional insured not subject to the "other insurance" condition or other policy terms which conflict with the Agreement between the named insured and the City of Duluth. The 2004 edition of ISO Additional Insured Endorsement CG 20 10 is not acceptable. If the CG 20 10 is used, it must be a pre-2004 edition.

- a. Workers' compensation insurance in accordance with applicable laws.
- b. Commercial general liability insurance in an amount not less than \$1,500,000 bodily injury per occurrence with combined single limit of \$1,500,000.
- c. \$300,000 property damage per occurrence.

Such insurance shall be maintained in full force and effect during the term of the Agreement. Such policies shall not be changed or canceled during the term of the Agreement without thirty (30) days' written notice to the City.

14. Any dispute arising under this Agreement shall first be submitted to good faith negotiation of the parties. Disputes under this Agreement may be brought in any state or federal court of competent jurisdiction.

15. In performing this contract FDL shall comply with each and every civil rights, human rights, anti-discrimination law or regulation which would apply to City.

16. In its interactions with parking ramp customers, invitees, and the City pursuant to this Agreement, FDL agrees to observe and comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, and the City of Duluth which are applicable to the services provided under this Agreement if the City were performing the service.

17. The parties intend to comply with Internal Revenue Service, Revenue Procedure 97-13, and this Agreement should be interpreted to assure that compliance. Any waivers by either party of a provision shall not imply a subsequent waiver of that, or any other, provision. Any amendment must be in writing, dated, and duly executed by the parties. The parties do not intend to create any third party beneficiary to this Agreement.

18. City shall pay all costs of utilities.

Dated: _____

CITY OF DULUTH

FOND DU LAC BAND
OF LAKE SUPERIOR CHIPPEWA

By _____
Mayor

By _____
Chairwoman

Attest _____
City Clerk

By _____
Secretary-Treasurer

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A

**Casino Ramp
Legal Description**

East half of Lot 19
Lot 21
Lot 23
Lot 25
Lot 27
Duluth Proper First Division, East Superior Street

and

Lot 28
Duluth Proper First Division, East First Street

EXHIBIT B

FEE SCHEDULE

One dollar per hour, eight dollars maximum daily – review annually.

Lost ticket pays daily maximum.

FDL employee monthly contract parking \$40 per month for the duration of the contract.

Public month contract parking \$65.

MINIMUM STANDARD CLEANING SCHEDULE

Daily

Walk through parking ramp picking up garbage. Remove trash from containers/replace with new liners/clean trash receptacles if necessary.

Elevator – Shake rug, sweep and mop.

Wipe down all doors inside and out.

All elevator lobby rugs shaken/floors swept/mopped.

Inspect both stairwells and landings and remove all debris.

Spot check all windows.

Weekly

Squeegee windows on each level/inside/out/wiping down the ledges of any excess of water.

Elevator/interior walls wiped down.

Mop east stairwell.

Bi-weekly

Vacuum/sweep east/west towers.

Sweep/mop east/west stairwell.

Wipe down railings both stairwells.

Wipe down window ledges both towers.

Wash top of elevator room roof.

Monthly

Elevator/sky light taken down/cleaned.

Elevator/door grooves on each level cleaned of debris.

Elevator/wipe down all exterior doors.

RECORDS

Keep daily log of results of inspections and of activities and tasks completed. Report incidents of unusual behavior, police actions at the ramp, injuries, theft, damage to property, installation or removal of signs or barriers, other items of interest on an incident report form approved by City.

MONEY COLLECTION AND TRANSFER

FDL shall operate a system of invoicing, collecting, and reporting the fees due the City for each customer that uses the Ramp. This shall include Card Deposits, Greater Downtown Council Coupons, Fond du Luth Coupons, Fond du Luth Contract Parking, Public Contract Parking, Daily Parking, and any other customer fee not previously enumerated. The system shall be capable of accurately recording and collecting each and every amount due and shall be subject to approval by the City. Revenue shall be handled, processed, and accounted for in a manner approved by the City. FDL shall deposit cash receipts daily in an account in its name at a financial institution to be identified to the City. At least monthly FDL shall turn over to the City Treasurer all revenue collected or due the City. At least monthly FDL shall produce and furnish to the City Treasurer financial and vehicle count documentation, which shall include daily and monthly activity. FDL shall provide to the City Treasurer monthly income statements and add historical comparisons over time.

GRASS

FDL shall cut grass and trim shrubs as needed.

SNOW REMOVAL

FDL shall remove snow as needed, either through its own efforts or through some mutual arrangement with the City.