

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

11-0244R

RESOLUTION AUTHORIZING AGREEMENT WITH TOWER OPTICAL COMPANY FOR COIN OPERATED OPTICALS TO BE PLACED AT LAKE PARK PLACE AND ENGER TOWER.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____ with Tower Optical Company for three coin operated opticals, two located at Lake Park Place and one located at Enger Tower, under which agreement the city shall receive 60% of all generated revenues, funds to be deposited in Fund 110-121-1219-4644 (General, Public Administration, Parks and Recreation).

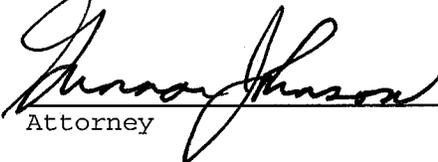
Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

PARKS/ATTY GBJ:cjk 5/6/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute an agreement with Tower Optical Company for the placement of three coin operated opticals, two shall be located at Lake Park Place and one at Enger Tower. The agreement provides for revenue sharing whereby the city receives 60% of all generated revenue. There is no cost to city for the opticals and they remain the property of Tower Optical. A repairmen from Tower Optical shall provide annual repairs and the city shall work with Tower Optical to provide general maintenance

THE TOWER OPTICAL COMPANY, INC.

ARTICLES OF AGREEMENT

Agreement entered into this _____ day of May 2011 by and between

City of Duluth
Parks and Recreation Division
12 E. 4th Street
Duluth, MN 55805

(hereinafter called CITY)

and

The Tower Optical Company, a corporation
organized and existing under the laws of the
State of Connecticut, with its office and
principal place of business at 275 East Avenue,
Norwalk, CT 06855

(hereinafter called TOWER OPTICAL).

In consideration of the mutual covenants and agreements herein contained, CITY and TOWER OPTICAL understand and agree to the following:

1. EQUIPMENT

TOWER OPTICAL shall provide three (3) Tower Optical coin-operated viewers for installation at mutually agreed upon sites on the property of CITY in the City of Duluth, County of _____ and State of MN. The equipment remains the property of TOWER OPTICAL at all times and may not be modified or altered in any way without the express written consent of TOWER OPTICAL.

2. TERM

The term of this Agreement shall begin on the ___ day of May, 2011 and shall continue until terminated as described in Section 7.

3. FINANCIAL PROVISIONS

CITY agrees to collect all monies from said viewers on a regularly scheduled basis and, by the 10th of each month, shall forward by mail to:

Name: The Tower Optical Company, Inc.
Address: P.O. Box 251
South Norwalk, CT 06856-0251

such sum or sums of money as shall represent all revenues (exclusive of taxes, as provided below) collected from viewers by CITY, less forty percent (40%) during the term provided for herein, which said sums of money CITY shall retain for rent and/or services in the collection of said monies. CITY shall include a statement indicating meter readings and revenues received with each payment.

Sales taxes levied by City, County or State on gross receipts from viewers installed under this agreement shall be deducted and paid from the gross receipts by CITY, as collector and remitter of monies, after which said parties' share of such receipts shall be calculated.

CITY shall be responsible for the payment of forty percent (40%) of any and all freight charges associated with the delivery and return of the viewers herein described.

4. EXCLUSIVITY

During the term of this Agreement, TOWER OPTICAL shall have exclusive right to the operation of binocular or telescopic viewer(s) rented or operated by coin on the property described herein.

5. LIABILITY

CITY shall notify Tower Optical in the event any viewer and/or installation covered under this Agreement becomes or is deemed unsafe for public use. TOWER OPTICAL shall assume all risks of damage, theft, pilferage, and vandalism, and CITY shall not be held responsible for any damage to the said viewer(s) while the same are installed on the property described herein, so long as the damage is not caused by negligence or intentional misconduct of CITY.

6. SERVICE

TOWER OPTICAL officers and employees, or duly appointed agents, shall have free access to go upon the property described herein for the purpose of installing and/or removing its viewers, and/or collecting, servicing, repairing and maintaining the same

7. TERMINATION

In the event either party breaches a provision of this Agreement, the non-defaulting party may terminate this Agreement by giving ten (10) days written notice by registered mail. If the default is remedied prior to the end of such ten (10) day period, the notice of termination shall be null and void.

Unless terminated due to a breach as provided above, this Agreement will remain in full force and effect until the ____ day of May 2014, after which either party may terminate the Agreement without cause by giving the other party written notice by registered mail at least 30 days before the desired termination date.

8. ATTORNEY'S FEES

In the event either party is required to begin legal proceedings against the other to enforce the terms and provisions of this Agreement, such party's damages shall include all costs and reasonable attorney's fees.

9. ENTIRE AGREEMENT

This Agreement constitutes the final and complete agreement of the parties concerning Tower Optical viewer installation as herein described. This Agreement may be changed only by written notification that is signed by both parties.

THE TOWER OPTICAL COMPANY, INC.

CITY OF DULUTH, PARKS
AND RECREATION DIVISION

Signature _____

Signature _____

Printed Name _____

Printed Name _____

Date: _____

Date: _____