FINANCE COMMITTEE

12-0003R

RESOLUTION AUTHORIZING AN AGREEMENT WITH HISTORIC UNION DEPOT, INC., IN THE AMOUNT OF $151,800.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement substantially in the form on file in the office of the city clerk as Public Document No. _____, with the Historic Union Depot, Inc. (Depot), in an amount no to exceed $151,800, payable from Fund 258, Agency 030, Account 5436-03 (Tourism Taxes, Finance, Tourism Tax Allocation Historic Union Depot).

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

ADM/FIN DM:slw 12/19/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement with the Depot for 2012 in order to support the historic, artistic and promotional activities of the Depot.

AGREEMENT

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), is made by and between the CITY OF DULUTH, a municipal corporation in St. Louis County, Minnesota, hereinafter referred to as the "City", and the HISTORIC UNION DEPOT, INC., hereinafter referred to as the "Provider".

WHEREAS, by various legislation the City has provided for the imposition of taxes on certain hotel/motel accommodations and certain food and beverage transactions (Food and Beverage Tax) and provided that certain of the proceeds of said Food and Beverage Tax collected are to be placed in Fund 258 and related funds and accounts to be expended by the City for advertising and promoting the City of Duluth as a tourist and convention center; and

WHEREAS, the City recognizes that programs, exhibits, and events that take place at the historic railroad depot building (Depot) promote the City of Duluth as a tourism and convention center and add to the quality of life for visitors and residents alike, and make a significant contribution to artistic development; and

WHEREAS, the City desires to enter into a contract with Provider pursuant to which the Provider will furnish special, skilled services in connection with the promotion of the history and arts in Duluth and St. Louis County; and

NOW, THEREFORE, it is hereby mutually agreed by and between the parties to this Agreement as follows:

1. The services set forth in Paragraph 2 below shall be furnished by Provider commencing January 1, 2012 through December 31, 2012, inclusive.

2. Provider shall furnish to the City its special skilled services in connection with the promotion of the history and arts in Duluth and St. Louis County, and maintaining exhibits that build community unity of residents and attract non-resident visitors. The services include marketing services and providing shared general administrative services that promote the functions of the St. Louis Heritage and Arts Center, as described above.

3. City will provide to the Provider in 2012 an amount not to exceed $151,800.00, in the following manner: twelve (12) monthly payments of $12,650.00 on approximately the 25th of each month, commencing February 2012 and continuing for twelve (12) consecutive months,

payable from Fund 258, Agency 030, Acct. 5436-03. It is understood and agreed that the City shall be obligated to provide payment to Provider only to the extent that sufficient taxes are derived from the Food and Beverage Tax, which are designated by the City Council to be placed in Fund 258 and related funds and accounts. In the event that insufficient taxes are derived from the Food and Beverage Tax, the City shall have the right in its sole and unfettered discretion to reduce or eliminate the funding available to the Provider under this Agreement or to terminate or otherwise modify this Agreement.

4. It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or the City or of constituting Provider as an agent, representative or employee of the City for any purpose or in any manner whatsoever. Provider shall not be considered an employee of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Provider while so engaged and any and all claims whatsoever on behalf of Provider arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, its officers, agents, contractors or employees shall in no way be the responsibility of the City. Provider and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the City shall, in no way, be responsible to defend, indemnify or save harmless Provider from liability or judgments arising out of Provider's intentional or negligent acts or omissions while performing the work specified by this Agreement.

5. By February 1, 2012, the Provider shall furnish to the City Auditor a budget for 2012. The Provider shall also give the City Auditor an income and expense report for the previous quarter and year-to-date. Such reports are due April 15, July 15, October 15, 2012, and January 15, 2013, and shall be in a format acceptable to the City Auditor.

6. City retains all its powers to determine how the public monies shall be used, and it may require reasonable changes in the marketing plan, work program outline, or use of the money, based upon circumstances. City may cancel this Agreement by giving 90 days written notice to Provider.

7. By June 15, 2013, Provider shall submit to the City Auditor a financial audit in standard form, prepared by an independent qualified auditor, covering the period January 1, 2012 to December 31, 2012.

8. Provider shall not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever without the prior written consent of the City's Administrative Assistant.

9. Provider agrees to comply in all respects with all federal, state and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter promulgated pertaining to unlawful discrimination.

10. Provider 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 its respective agencies which are applicable to its activities under this Agreement.

11. Notice to City or Provider provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

CITY: City of Duluth
402 City Hall
411 W. 1st Street
Duluth, MN 55802

PROVIDER: Historic Union Depot, Inc.
506 West Michigan Street
Duluth, MN 55802

12. 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.

13. 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.

14. Any waiver by any party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision

15. This Agreement constitutes the entire Agreement between the City and Provider and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written below.

CITY OF DULUTH

By _____
Mayor

Attest:

_____
City Clerk
Date Attested: _____

Countersigned:

_____
City Auditor

Approved as to form:

_____
City Attorney

HISTORIC UNION DEPOT, INC.

By _____
Its Executive Director