FINANCE COMMITTEE

12-0004R

RESOLUTION AUTHORIZING AN AGREEMENT WITH GREAT LAKES AQUARIUM, IN THE AMOUNT OF $300,000.

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 Lake Superior Center dba Great Lakes Aquarium, in an amount not to exceed $300,000, payable from Fund 258, Agency 030, Account 5436-08 (Tourism Taxes, Finance, Tourism Tax Allocation Great Lakes Aquarium).

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 Great Lakes Aquarium for 2012 in order to support the exhibits and promotional activities of the Great Lakes Aquarium.

AGREEMENT
BY AND BETWEEN
GREAT LAKES AQUARIUM
AND
CITY OF DULUTH

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation, hereinafter referred to as City, and LAKE SUPERIOR CENTER dba Great Lakes Aquarium located at 353 Harbor Drive, Duluth, MN 55802 a non-profit corporation under the laws of Minnesota, hereinafter referred to as GLA.

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 Great Lakes Aquarium promote the City of Duluth as a tourism and convention center and add to the quality of life for visitors and residents alike, and

WHEREAS, the City desires to enter into a contract with GLA pursuant to which the GLA will continue with the promotion of the exhibits and programs in Duluth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

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

2. GLA shall use the funds provided for in paragraph 3 in accordance with GLA's Mission and to promote events, exhibits and programs that benefit the citizens of Duluth and promote Duluth as a tourist destination.

3. City will provide to the GLA in 2012 an amount not to exceed $300,000.00. Funds will be disbursed to GLA in a dollar amount and at the schedule determined by GLA to be in its best interest, payable from Fund 258, Agency 030, Acct. 5436-08 (Tourism, Finance). It is understood and agreed that the City shall be obligated to provide payment to GLA 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 GLA under this Agreement or to terminate or otherwise modify this Agreement.

4. GLA shall provide to 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.

5. 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 GLA.

6. By February 1, 2012, GLA shall furnish to the City Auditor a budget for 2012. GLA shall also provide 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.

7. Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and GLA only upon being reduced to writing and signed by a duly authorized representative of each party.

8. Assignment. GLA will not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever.

9. Records and Inspection. Records shall be maintained by GLA in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years. The City and its duly authorized representative shall have access to the books, documents, papers and records of the GLA that are related to this Agreement.

10. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting GLA as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. GLA and its employees shall not be considered employees 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 GLA's employees while so engaged, and any and all claims whatsoever on behalf of GLA's employees arising out of employment shall in no way be the responsibility of City. GLA's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless GLA from liability or judgments arising out of the acts or omissions of GLA or its employees while performing the work specified by this Agreement.

11. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

12. GLA expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

13. GLA shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the GLA's a) breach of this Agreement or b) its negligence or misconduct or that of its agents or contractors in performing the services hereunder or c) any claims arising in connection with GLA's employees or contractors, or d) the use of any materials supplied by the GLA to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

14. GLA agrees to obtain and maintain and provide evidence of insurance in amounts sufficient to provide coverage for any liabilities which may reasonably arise out of or result from its obligations pursuant to this Agreement. The insurance shall be maintained in full force and effect during the life of this Agreement and shall protect GLA, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by GLA, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

15. GLA, as part of the consideration under this Agreement, does hereby covenant and agree that:

a. No person on the grounds of race, color, creed, religion, national origin, ancestry,

age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.

b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

16. GLA agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

17. 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.

18. Notice to City or GLA 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.

To City of Duluth:	City of Duluth Room 402 City Hall 411 West First Street Duluth, MN 55802
To GLA:	Great Lakes Aquarium Attn: Executive Director 353 Harbor Drive Duluth, MN 55802

19. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

20. The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party will not be construed as, or constitute a continuing waiver of such

provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

21. It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. 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.

22. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH-

By

_____
Mayor

Attest:

_____
City Clerk
Date Attested:_____

Countersigned:

_____
City Auditor

As to form:

_____
City Attorney

LAKE SUPERIOR CENTER
DBA GREAT LAKES AQUARIUM

By_____
GLA Representative

Its _____
Title of Representative
Date:_____