

FINANCE COMMITTEE

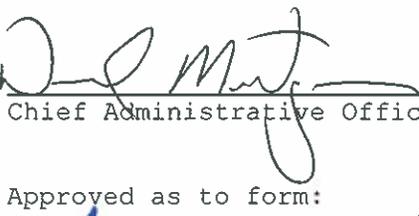
12-0005R

RESOLUTION AUTHORIZING AN AGREEMENT WITH DULUTH PUBLIC ARTS FUND, INC., IN THE AMOUNT OF \$30,000.

CITY PROPOSAL:

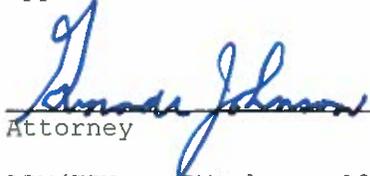
RESOLVED, that the proper city officials are hereby authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with the Duluth Public Arts Fund, Inc. (DPAC), in an amount not to exceed \$30,000, payable from Fund 258, Agency 030, Account 5436-04 (Tourism Taxes, Finance, Tourism Tax Allocation Duluth Public Arts).

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ADM/FIN DM:slw 12/16/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement with Duluth Public Arts for 2012 in order to support artistic and promotional activities and the maintenance and preservation of public art in Duluth.

**AGREEMENT
BY AND BETWEEN
DULUTH PUBLIC ARTS FUND, INC.
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 DULUTH PUBLIC ARTS FUND, INC. located at 301 W. 1st Street, Duluth, MN 55802 a non-profit corporation under the laws of Minnesota, hereinafter referred to as "DPAC."

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 works of art financially assisted by DPAC are for the enjoyment of the public and promote the City of Duluth by adding to the quality of life for visitors and residents alike; and

WHEREAS, the City desires to enter into a contract with DPAC pursuant to which the DPAC will continue the promotion of the arts 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 DPAC commencing January 1, 2012 through December 31, 2012, inclusive.

2. DPAC shall use the funds provided for in paragraph 3 in accordance with DPAC's Mission to support the public arts in Duluth by preserving and promoting art in public places, and to support public art activities that benefit the citizens of Duluth and promote Duluth as a tourist destination.

3. City will provide to the DPAC in 2012 an amount not to exceed \$30,000.00, in the following manner: quarterly payments of \$7,500.00 on January 15th, April 15th, July 15th and October 15th, payable from Fund 258, Agency 030, Acct. 5436-04 (Tourism, Finance). It is understood and agreed that the City shall be obligated to provide payment to DPAC 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 DPAC under this Agreement or to terminate or otherwise modify this Agreement.

4. By February 1, 2012, the DPAC shall furnish to the City Auditor a budget for 2012.

5. DPAC shall provide to the City Auditor a cumulative income and expense report for the previous quarter. 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. By June 15, 2013, DPAC shall submit to the City Auditor a financial audit in a standard form, prepared by an independent qualified auditor, covering the period from January 1, 2012 to December 31, 2012.

7. 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 DPAC.

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

9. DPAC will not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever.

10. Records shall be maintained by DPAC 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 DPAC that are related to this Agreement.

11. 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 DPAC 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. DPAC 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 DPAC's employees while so engaged, and any and all claims whatsoever on behalf of DPAC's employees arising out of employment shall in no way be the responsibility of City. DPAC'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 DPAC from liability or judgments arising out of the acts or omissions of DPAC or its employees while performing the work specified by this Agreement.

12. 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.

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

14. DPAC 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 DPAC'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 DPAC's employees or contractors, or d) the use of any materials supplied by the DPAC 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.

15. DPAC 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 DPAC, 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 DPAC, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

16. DPAC, 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.

17. DPAC 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.

18. 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.

19. Notice to City or DPAC 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 DPAC: Duluth Public Arts Fund, Inc.
 c/o Duluth City Clerk
 330 City Hall
 411 West First Street
 Duluth, MN 55802

20. 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.

21. 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.

22. 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.

23. 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-

DULUTH PUBLIC ARTS FUND, INC.

By _____
Mayor

By _____
DPAC Representative

Attest:

Its _____
Title of Representative
Date:

City Clerk
Date Attested: _____

Countersigned:

City Auditor

As to form:

City Attorney

Filename: Duluth Public Arts Commission tourism tax agr
Directory: G:\Administration
Template: C:\Users\swegener\AppData\Roaming\Microsoft\Templates\Norma
I.dotm
Title:
Subject:
Author: City of Duluth
Keywords:
Comments:
Creation Date: 11/22/2011 3:58:00 PM
Change Number: 53
Last Saved On: 1/4/2012 9:46:00 AM
Last Saved By: Sue Wegener
Total Editing Time: 210 Minutes
Last Printed On: 1/9/2012 9:52:00 AM
As of Last Complete Printing
Number of Pages: 5
Number of Words: 1,570 (approx.)
Number of Characters: 8,954 (approx.)