

FINANCE COMMITTEE

12-0066R

REPLACEMENT

RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF \$7,055,000 GENERAL OBLIGATION TAX ABATEMENT BONDS, SERIES 2012A; ESTABLISHING THE TERMS AND FORM THEREOF; CREATING A BOND FUND THEREFOR; AND AWARDING THE SALE THEREOF.

CITY PROPOSAL:

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

Section 1. Bond Purpose and Authorization.

1.01 A. The Spirit Mountain Recreation Area Authority (the "Authority") has proposed to the City improvements to the Spirit Mountain Recreation Area, including lift improvements, parking lot improvements and a new chalet on Grand Avenue (the "Project") and that the City provide funds to finance the Project.

B. Pursuant to Minnesota Statutes, Section 469.1812 through 469.1815 (the "Act"), the city council may grant an abatement of the taxes imposed by the City on parcels of property, subject to certain conditions set forth in the Act.

C. To pay the costs of the Project or principal of and interest on the general obligation bonds to be issued by the City to pay for the Project, the City Council by Resolution 12-0019R adopted January 17, 2012 (the "Abatement Resolution"), has granted an abatement of property taxes imposed by the City on certain parcels in the City pursuant to the Act for a period of 15 years commencing with property taxes payable in 2013 and concluding with property taxes payable in 2027 in a total aggregate amount of \$7,500,000 (the "Tax Abatement"). The revenues received by the City from such Tax Abatement are herein referred to as the "Tax Abatement Revenues."

D. The city council has determined to issue its General Obligation Tax Abatement Bonds, Series 2012A, in the amount of \$7,055,000 pursuant to Minnesota Statutes, Section 469.1814 and Minnesota Statutes, Chapter 475, to pay for the Project and costs of issuance of the bonds (the "Bonds") and to pledge the City's

full faith and credit and power to levy direct ad valorem taxes, and the Tax Abatement Revenues to pay the principal of and interest on the Bonds.

1.02 Public Financial Management, Inc., financial consultant to the City, has given notification to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds.

1.03 Pursuant to such solicitation for bids for the sale of the Bonds, the city council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Bank of America Merrill Lynch of New York, New York (the "Purchaser"), to purchase the Bonds at a cash price of \$7,069,704.07, and upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated the date of delivery as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate
2014	\$350,000	2.000%
2015	355,000	2.000%
2016	365,000	2.000%
2017	370,000	2.000%
2018	380,000	2.000%
2019	385,000	2.000%
2020	395,000	2.000%
2021	400,000	2.000%
2022	410,000	2.000%

Year	Amount	Interest Rate
2023	415,000	2.250%
2024	425,000	2.375%
2025	435,000	2.500%
2026	450,000	2.625%
2027	460,000	3.000%
2028	475,000	3.000%
2029	485,000	3.000%
2030	500,000	3.000%

2.02 A. The Bonds maturing in the years 2014 through 2022 shall not be subject to optional redemption and prepayment before maturity, but those maturing in the year 2023 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2022, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City and by lot as to the Bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

B. In the event any of the Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) at least 30 days but not more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Bond Registrar; provided however, that so long as the Bonds are registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Representation Letter hereinafter described. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of Bonds not affected by such defect or failure. Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

C. If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond

Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2012. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 A. The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

B. The city clerk is authorized and directed to obtain a copy of the approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as public document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 3.01 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 A. In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

B. Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

C. All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

D. DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer

of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and deliver, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new bond in Book-Entry Form in exchange for a previous bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

E. The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

- (i) with respect to notices of redemption; and

(ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

F. All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds

during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

Section 3. Form of the Bonds.

3.01 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

R- \_\_\_\_\_ \$ \_\_\_\_\_

CITY OF DULUTH  
GENERAL OBLIGATION TAX ABATEMENT BOND, SERIES 2012A

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	February __, 2012	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above, on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1,

2012. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the city council. The Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15<sup>th</sup> day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$7,055,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Chapter 475, Section 469.1814, and all other laws thereunto enabling, and pursuant to Resolution No. 12-0066R adopted by the governing body of the City on February 9, 2012 (the "Resolution"), for the purpose of financing improvements to the Spirit Mountain Recreation Area, for payment of part of the interest cost of said bond issue and for costs of issuance of the Bonds.

The Bonds of this series maturing in the years 2014 through 2022 are not subject to redemption before maturity, but those maturing, or subject to mandatory redemption, in the year 2023 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2022, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City, and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

Not less than 30 nor more than 60 days prior to the date fixed for redemption and prepayment of any Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations executed by the City and DTC.

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the

registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and the Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, by its city council, has caused this Bond to be executed in its name by the manual or facsimile signatures of the Mayor and the City Clerk.

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of a Bond registered in the name of the owner named above, in the principal amount stated above, and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association, as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
2/___/2012	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto \_\_\_\_\_

(Name and Address of Assignee)

\_\_\_\_\_ Social Security or Other  
\_\_\_\_\_ Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_.

NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank, Trust Company, member of  
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or

its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 4. Revenues, Accounts and Covenants.

4.01 The City hereby creates a separate 2012 Spirit Mountain Capital Improvement Fund, to which there shall be credited \$7,065,000.00 of the proceeds of the Bonds. The funds from this account shall be used solely to pay the costs of the Project and the costs of issuance of the Bonds; and the money in said account shall be used for no other purpose except as otherwise provided by law.

4.02 A. Until the Bonds are fully paid or duly called for redemption or otherwise discharged, the City will also maintain a separate debt service account designated as the Series 2012A Bonds Debt Service Account (the "Debt Service Fund") in the City's debt service fund created by Section 54(a) of the City Charter, to be used solely for the payment of the interest and the principal, respectively, as such principal and interest become due and payable on the Bonds.

B. There is hereby pledged to the Debt Service Fund the Tax Abatement Revenues pursuant to the Abatement Resolution as received by the City.

C. The Treasurer shall credit to the Debt Service Fund the rounding amount of the Bonds (\$4,704.07), all Tax Abatement Revenues received by the City pursuant to the Abatement Resolution, subject to the right of the City to appropriate other funds on hand to payments due on the Bonds and to cancel such Tax Abatements; the Tourism Taxes pledged in Section 4.03 hereof; the ad valorem taxes levied, if any, pursuant to Section 4.04 hereof; and any other funds appropriated by the city council for payment of the principal of and interest on the Bonds.

4.03 A. The City imposes sales taxes on certain sales of food and beverages and lodging within the City pursuant to Laws of Minnesota 1977, Chapter 438, and Laws of Minnesota 1980, Chapter 511, Section 1, Subdivision 2 and Section 3, as amended (the "Tourism Taxes"). The City pledges \$201,546.44 of

Tourism Taxes to be deposited in the Debt Service Account on or before July 1, 2012 and \$500,000 per year of Tourism Taxes to the repayment of the principal of and interest on the Bonds commencing in 2013 and continuing each year thereafter until the Bonds are paid in full.

B. On or prior to the delivery of the Bonds, the mayor and city clerk are hereby authorized and directed to execute on behalf of the City a pledge agreement (the "Pledge Agreement") with the Spirit Mountain Recreation Area Authority (the "Authority") in substantially the form now on file with the city clerk as public document number \_\_\_\_\_. The execution and delivery of the Pledge Agreement by the mayor and the city clerk, in the form presented to the city council with such changes, omissions, insertions and revisions as the mayor deems advisable, is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. The City shall deposit the revenues of the Authority paid pursuant to the Pledge Agreement, in the Debt Service Fund.

4.04 A. The full faith and credit and taxing power of the City are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the Bonds, as such principal and interest respectively become due. To provide monies for the payment of the principal and interest on the Bonds, there is hereby levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls and collected with and part of the other general property taxes of the City for the years and in the amounts as follows:

Levy Year	Collection Year	Gross Tax Levy	Tourism Tax Revenue	Net Tax Levy
2011	2012	\$165,540	\$165,540	\$0
2012	2013	\$543,815	\$500,000	\$43,815
2013	2014	\$541,715	\$500,000	\$41,715
2014	2015	\$544,760	\$500,000	\$44,760
2015	2016	\$542,345	\$500,000	\$42,345
2016	2017	\$545,075	\$500,000	\$45,075
2017	2018	\$542,345	\$500,000	\$42,345
2018	2019	\$544,760	\$500,000	\$44,760
2019	2020	\$541,715	\$500,000	\$41,715
2020	2021	\$543,815	\$500,000	\$43,815
2021	2022	\$540,455	\$500,000	\$40,455

Levy Year	Collection Year	Gross Tax Levy	Tourism Tax Revenue	Net Tax Levy
2022	2023	\$541,150	\$500,000	\$41,150
2023	2024	\$541,052	\$500,000	\$41,052
2024	2025	\$545,383	\$500,000	\$45,383
2025	2026	\$543,480	\$500,000	\$43,480
2026	2027	\$544,740	\$500,000	\$44,740
2027	2028	\$540,278	\$500,000	\$40,278
2028	2029	\$540,750	\$500,000	\$40,750

Said levies are such that if collected in full they, together with the Tourism Taxes pledged for payment of principal and interest on the Bonds, will produce at least 5% in excess of the amount needed to meet when due the principal and interest on the Bonds.

Such tax levies shall be irrevocable as long as any of the Bonds issued hereunder are outstanding and unpaid; provided, however, that in each year while any Bonds issued hereunder remain outstanding, the city council shall reduce or cancel the above levies to the extent of an irrevocable appropriation to the Debt Service Fund of monies actually on hand for payment of the principal and interest payable in the ensuing year and shall direct the county auditor to reduce the levy for such calendar year by that amount.

B. All proceeds of the Tax Abatement Revenues, pledged Tourism Taxes and said taxes are hereby appropriated and shall be paid when collected into the Debt Service Fund. If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balance therein is sufficient.

4.05 Proceeds of the Bonds on deposit in the 2012 Spirit Mountain Capital Improvement Fund may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the improvement program and/or payment of the principal and interest on the Bonds when due.

Section 5. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the city clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as public document No. 11-1114-32.

Section 6. Tax Covenants; Miscellaneous.

6.01 The city council covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

6.02 A. No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued. To this effect, any proceeds of the Bonds and any sums from time to time held in such debt service account (or any other City

account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations.

B. In addition, the proceeds of the Bonds and money in such debt service account shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1996, as amended (the "Code").

C. The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

6.03 A. Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby represents that with respect to the gross proceeds of the Bonds, the following schedule is expected to be met: (i) at least 15% of the gross proceeds of the Bonds will be allocated to expenditures for the governmental purpose of the Bonds within six months of the date of issue of the Bonds; (ii) at least 60% of such proceeds will be allocated for such purposes within the one year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Bonds, and that 100% of the available proceeds of the Bonds will be allocated within 30 months from the date of issue of the Bonds.

B. The City shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

Section 7. Certificates of Proceedings.

7.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds herein authorized have been duly entered on his register.

7.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished,

constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

7.03 The officers of the City are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Approved:



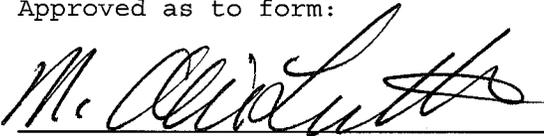
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

FINANCE    RET:CW:rb    1/31/2012

STATEMENT OF PURPOSE: This resolution establishes the terms and form and awards the sale of \$7,055,000 General Obligation Tax Abatement Bonds, Series 2012A, to Bank of America Merrill Lynch, New York, New York at a true interest cost of 2.5176%. The proceeds of the Bonds will be used to pay for improvements to the Spirit Mountain Recreation Area, including lift improvements, parking lot improvements and a new chalet on Grand Avenue, and costs of issuance.

*Draft 1/5/2012*

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**PLEDGE AGREEMENT**

**between**

**CITY OF DULUTH, MINNESOTA**

**and**

**SPIRIT MOUNTAIN RECREATION AREA AUTHORITY**

**Dated as of February \_\_, 2012**

**Relating to:**

**CITY OF DULUTH  
GENERAL OBLIGATION TAX ABATEMENT BONDS  
SERIES 2012A**

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THIS PLEDGE AGREEMENT (the "Agreement") made as of February \_\_\_, 2012, by and between the CITY OF DULUTH, a home rule charter city and political subdivision of the State of Minnesota (the "City"), and the SPIRIT MOUNTAIN RECREATION AREA AUTHORITY, an authority of the City created by the Laws of Minnesota 1973, Chapter 327, as amended (the "Authority").

WITNESSETH:

WHEREAS, the Legislature of the State of Minnesota has created the Authority to administer and develop the Spirit Mountain Recreation Area on behalf of the City; and

WHEREAS, the City operates a program of public recreation, of which the Spirit Mountain Recreation Area and the building, fixtures and equipment are a part; and

WHEREAS, the Authority has identified the need to improve the Spirit Mountain Recreation Area facilities, including lift improvements, parking lot improvements and a new chalet on Grand Avenue (collectively, the "Project"); and

WHEREAS, the City Council by resolution adopted on January 17, 2012, has granted an abatement of property taxes to be imposed by the City on certain parcels located in the City pursuant to Minnesota Statutes, Section 469.1812 to 469.1815 (the "Tax Abatement Act") for a period of 15 years commencing with property taxes payable in 2013 and concluding with taxes payable in 2027 (the "Tax Abatement").

WHEREAS, the City has authorized the issuance of its \$\_\_\_\_\_ General Obligation Tax Abatement Bonds, Series 2012A (the "Bonds"), the proceeds to be used to finance the costs of the Project, capitalized interest and costs of issuance of the Bonds; and

WHEREAS, the City has pledged Tax Abatement revenue for paying the principal of and interest on the Bonds, but the City and Authority's plan of finance for the Project is that the principal of and interest on the Bonds will be paid (i) from \$500,000 per year of Tourism Taxes (as hereinafter defined), and (ii) the balance of the principal of and interest on the Bonds each year from operating revenues of the Authority; and

WHEREAS, the Tourism Taxes may be used to promote tourism in the City, including capital improvements to tourism facilities, and to improve Spirit Mountain Recreation Area, including utilizing Tourism Taxes to pay principal of and interest on the Bonds; and

WHEREAS, it is necessary and desirable for the City and the Authority to enter into this Agreement to provide for the pledge of certain revenues for payment of the principal of and interest on the Bonds and to set forth the covenants and agreements regarding the Authority's operation of the Spirit Mountain Recreation Area; and

WHEREAS, the City and the Authority entered into a Use and Management Agreement, dated as of March 28, 2003 (the "2003 Agreement"), relating to the City's \$1,646,749.70 Gross Revenue Recreation Facility Bond (Spirit Mountain Recreation Area Project), Series 2003, dated March 28, 2003 (the "2003 Bonds"); and

WHEREAS, the final maturity of principal and interest on the 2003 Bonds is December 1, 2012, and the Authority's obligations under the 2003 Agreement terminate with the final payment of the 2003 Bonds.

NOW, THEREFORE, in the joint and mutual exercise of their powers and in consideration of mutual covenants herein contained, the parties hereto recite and agree as follows:

## ARTICLE I – DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.1 Definitions.** Unless the context otherwise requires, the terms in this Agreement shall, for all purposes of this Agreement, have the meaning specified in the City's Resolution No. 12-\_\_\_\_ authorizing the issuance of the Bonds, adopted February 9, 2012 (the "Bond Resolution"), unless the context clearly otherwise requires, and except as supplemented by this Section 1.1:

"Bond Resolution" shall mean Resolution No. 12-\_\_\_\_\_ adopted by the City Council on February 9, 2012, authorizing the issuance and sale of the Bonds.

"Bonds" shall mean the City's \$ \_\_\_\_\_ General Obligation Tax Abatement Bonds, Series 2012A, dated February \_\_, 2012, and any bonds issued to refund the Bonds.

"Debt Service Schedule" means the Debt Service Schedule for the Bonds set forth on Exhibit A hereto.

"Event of Default" shall mean any of the occurrences specified in Section 4.2 hereof.

"Project" shall mean capital improvements to the Spirit Mountain Recreation Area facilities, including lift improvements, parking lot improvements and a new chalet on Grand Avenue.

"Recreation Area" shall mean the Spirit Mountain Recreation Area operated by the Authority.

"State" shall mean the State of Minnesota.

"Tax Abatement" shall mean the property tax abatement with respect of property taxes levied by the City on the properties listed on the Tax Abatement Resolution for 15 years commencing with taxes payable in 2013 and concluding with taxes payable in 2027, in an amount not exceeding \$500,000 per year and a total aggregate amount of \$7,500,000, all as set forth in the Tax Abatement Resolution.

"Tax Abatement Resolution" shall mean Resolution No. 12-\_\_\_\_\_ adopted by the City Council on January 17, 2012.

"Term" shall mean the period during which this Agreement remains in effect as specified in Section 2.5.

“Tourism Taxes” shall mean a tax on certain sales of food and beverages and lodging pursuant to Laws of Minnesota 1977, Chapter 438, Laws of Minnesota 1980, Chapter 511, Section 1, Subdivision 2 and Sections 2 and 3, as amended, and the implementing ordinances of the City regarding such taxes.

“2003 Agreement” shall mean the Use and Management Agreement dated as of March 28, 2003, between the City and the Authority relating to the 2003 Bonds.

“2003 Bonds” shall mean the City’s \$1,646,749.70 Gross Revenue Recreation Facility Bond (Spirit Mountain Recreation Area Project), Series 2003C, dated March 28, 2003.

**Section 1.2 Severability.** If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation, payment and performance of the obligations herein.

**Section 1.3 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

## **ARTICLE II – PLAN OF FINANCE FOR THE PROJECT; CONSTRUCTION OF PROJECT**

**Section 2.1 Plan of Finance for the Project.** Pursuant to the Bond Resolution, the City Council has authorized the Bonds to be issued pursuant to the Tax Abatement Act, has pledged the City’s full faith and credit and power to levy ad valorem taxes and the Tax Abatement revenues to pay the principal of and interest on the Bonds. Further, the City has reserved the right to reduce the levy and Tax Abatement revenue to the extent other funds are appropriated to the debt service account for the Bonds. The plan for the repayment of the principal of and interest on the Bonds anticipates utilizing (i) capitalized interest to pay the August 1, 2012 and February 1, 2013 interest payments on the Bonds and a portion of the interest on the Bonds on August 1, 2013; (ii) \$500,000 per year of Tourism Taxes; and (iii) the balance of the funds needed to pay the principal of and interest on the Bonds from the Authority’s operating revenues (the “Revenues”). The Debt Service Schedule for the Bonds is attached as Exhibit A and attached hereto as Exhibit B is the scheduled payments from the Authority to the City of the Revenues to pay such debt service payments on the Bonds. Further, the Authority pledges additional Revenues such that the pledged Revenues to pay debt service on the Bonds (including the Tourism Taxes) equals 105% of the principal and interest on the Bonds when due.

**Section 2.2 Construction of the Project.** The Authority agrees to acquire, install and/or construct the Project in 2012, with completion no later than December 1, 2012. The Authority may obtain a disbursement from the 2012 Spirit Mountain Capital Improvement Fund, as set out in the Bond Resolution upon submitting a request to the City Treasurer for payment from proceeds of the Bonds.

**Section 2.3 Term.** This Agreement shall remain in full force and effect so long as the Bonds remain outstanding.

### **ARTICLE III – MANAGEMENT AND OPERATION OF SPIRIT MOUNTAIN FACILITIES; TAX COVENANTS**

**Section 3.1 Representations, Covenants and Warranties of the Authority.** The Authority represents, covenants and warrants as follows:

A. The Authority shall (i) keep the Recreation Area in good condition and repair, normal depreciation excepted; (ii) from time to time replace any worn, broken or defective portion thereof; (iii) promptly notify the City of any material loss of or material damage to the facilities or of any material adverse change in the prospect of payment of any account, instrument and other right to payment constituting Revenues; (iv) keep accurate and complete records pertaining to the Recreation Area's financial condition, business and property, and submit to the City such periodic reports concerning the Recreation Area's financial condition, business and property as the City may from time to time request; (v) at all reasonable times permit the City and its representatives to examine, inspect and copy the Authority's records pertaining to the Authority's financial condition, business and property; and (vi) at the City's request, promptly execute, endorse and deliver such instruments, documents and writings and take such other actions deemed by the City to be necessary or desirable to establish, protect, perfect or enforce the rights of the City under this Agreement and applicable law, and pay all costs of filing in all public offices where filing is deemed by the City to be necessary or desirable.

B. The Authority shall exercise due care in the use, operation and maintenance of the Recreation Area facilities, and shall not install, use, operate or maintain the Recreation Area facilities improperly, carelessly, in violation of any state or federal law or for a purpose or in a manner contrary to that contemplated by this Agreement. The Authority shall obtain all permits and licenses necessary for the operation, possession and use of the Recreation Area facilities. The Authority shall comply with all state and federal laws applicable to the use, possession, management and operation of the Recreation Area facilities, and if compliance with any such state or federal law requires changes or additions to be made to the Recreation Area facilities, such changes or additions shall be made by the Authority at its expense.

C. The Authority agrees to deposit with the City Treasurer for credit to the debt service account for the Bonds as set forth in the Bond Resolution on or before January 15 of each year of the Term of this Agreement, commencing on January 15, 2013, the amounts set forth under the column titled "Spirit Mountain Revenues" for the applicable payment date on Exhibit B hereto.

**Section 3.2 Tax Covenants.** In order to ensure that the interest on the Bonds shall at all times be excluded from gross income for purposes of federal income taxation, the Authority specifically represents, warrants and covenants with the City and all holders of the Bonds that:

A. It will fulfill all conditions specified in Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the “Code”) and applicable Treasury Regulations as necessary to maintain the tax-exempt status of the interest borne by the Bonds.

B. All of the property financed, refinanced or otherwise provided by the net proceeds of the Bonds will be owned by governmental organizations.

C. The Authority has not leased, sold, assigned, granted or conveyed and will not lease, sell, assign, grant or convey all or any portion of the facilities financed by the Bonds or any interest therein to the United States or any agency or instrumentality thereof within the meaning of Section 149(b) of the Code.

D. During the Term, the Authority will not take or permit any of their officers to take any action with respect to this Agreement or the portion of the Recreation Area facilities financed or refinanced with the proceeds of the Bonds which would cause the interest on the Bonds to become includable in gross income under the Code, and will take all actions necessary to ensure that interest remains not includable in gross income under the Code insofar as they have the power and authority to take such actions.

E. Unless the Authority has received an opinion of Bond Counsel stating that such action will not adversely effect the tax-exempt status of the interest on the Bonds, the Authority shall not enter into any contract with a nongovernmental person for the management or operation of the Recreation Area facilities, or any part thereof.

F. The Bonds are not “private activity bonds” as defined in Section 141 of the Code and the Authority shall not use the Recreation Area facilities financed with the proceeds of the Bonds in a manner which will cause the Bonds to become “private activity bonds.”

G. The Authority will comply with and fulfill all other requirements and conditions of the Code and Treasury Regulations and rulings issued pursuant thereto relating to the acquisition, construction and operation of the facilities financed or refinanced by the Bonds to the end that interest on the Bonds shall at all times be exempt from federal income taxation.

**Section 3.3 Other Liens.** The Authority may grant a purchase money lien in equipment purchased for the Recreation Area facilities after the date of this Agreement so long as no lien shall extend to or cover any property of the Recreation Area facilities other than the equipment so acquired or being acquired for the Recreation Area facilities.

**Section 3.4 City’s Obligation.** The City covenants, pledges and agrees, commencing in 2013 and continuing each year thereafter through 2031, to appropriate from available Tourism Taxes \$500,000 per year for payment of principal of and interest on the Bonds.

**ARTICLE IV – EVENTS OF DEFAULT**

**Section 4.1 Enforcement of Covenants.** Upon an Event of Default hereunder, the City, in the name and on behalf of the Authority, or, at its option, in its own name, may perform or observe such agreement and take any action which the City may deem necessary or desirable to cure or correct such Event of Default. All of the City’s advances, charges, costs and expenses in

connection with the Bonds and in the protection and exercise of any rights or remedies hereunder, including, without limitation, reasonable attorneys' fees, shall be secured hereunder and shall be paid by the Authority to the City on demand.

**Section 4.2 Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default": (i) any default in the payment or performance of any of the obligations which continues after ten-days' notice by the City; or (ii) any default under the terms of this Agreement which continues after 30-days' notice by a party hereto.

**Section 4.3 Remedies.** Upon the occurrence of any Event of Default and at any time thereafter, the parties hereto may exercise any one or more of the following rights and remedies: (i) the City may declare all obligations hereunder to be immediately due and payable, and the same shall thereupon be immediately due and payable, without presentment or other notice or demand, all of which are hereby waived by the City and the Authority; or (ii) any party hereto may exercise and enforce any and all rights and remedies available upon default under this Agreement and any applicable laws of the State of Minnesota.

**Section 4.4 Notices on Default.** If notice to the City and the Authority is required, such notice shall be deemed reasonably and properly given if mailed by regular or certified mail, postage prepaid, to the City and the Authority at the addresses stated in Section 5.2 of this Agreement.

## **ARTICLE V – MISCELLANEOUS**

**Section 5.1 Miscellaneous.** A carbon, photographic or other reproduction of this Agreement is sufficient as a financing statement. This Agreement cannot be waived, modified, amended, abridged, supplemented, terminated or discharged except by a writing duly executed by the parties hereto. A waiver shall be effective only in the specific instance and for the specific purpose given. No delay or failure to act shall preclude the exercise or enforcement of any of the City's rights or remedies. All rights and remedies of the City shall be cumulative and may be exercised singularly, concurrently or successively at the City's option, and the exercise or enforcement of any one such right or remedy shall not be a condition to or bar the exercise or enforcement of any other. This Agreement shall be binding upon and inure to the benefit of the City and the Authority and their respective successors and assigns and shall take effect when executed by the City and the Authority.

**Section 5.2 Notices to City and Authority.** Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be communicated to or between the parties hereto shall be sufficient for every purpose hereunder if made, given or furnished in writing, and served upon such party or mailed with postage prepaid and addressed as follows:

If to the City:

Chief Financial Officer  
411 West First Street, Room 107  
Duluth, MN 55802

If to the Authority:

Executive Director  
Spirit Mountain Recreation Area  
9500 Spirit Mountain Place  
Duluth, MN 55810

**Section 5.3 Subordinate to 2003 Use and Management Agreement.** This Agreement shall be subject to and subordinate to the 2003 Use and Management Agreement until the 2003 Bonds are no longer outstanding.

(remainder of page left intentionally blank)

IN WITNESS WHEREOF, the duly authorized officers of the parties hereto affix their signatures, all as of the date first written above.

CITY OF DULUTH, MINNESOTA

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Clerk

Signature page for the Pledge Agreement between the City of Duluth, Minnesota and the Spirit Mountain Recreation Area Authority dated as of February \_\_, 2012, Relating to the City of Duluth General Obligation Tax Abatement Bonds, Series 2012A

SPIRIT MOUNTAIN RECREATION  
AREA AUTHORITY

By \_\_\_\_\_  
Its Chair

By \_\_\_\_\_  
Its Secretary

Signature page for the Pledge Agreement between the City of Duluth, Minnesota and the Spirit Mountain Recreation Area Authority dated as of February \_\_, 2012, Relating to the City of Duluth General Obligation Tax Abatement Bonds, Series 2012A

**EXHIBIT A**

**DEBT SERVICE SCHEDULE FOR THE BONDS**

City of Duluth, Minnesota  
General Obligation Tax Abatement Bonds, Series 2012A

**EXHIBIT B**

**SPIRIT MOUNTAIN RECREATION AREA AUTHORITY  
SCHEDULED PAYMENTS TO THE CITY OF DULUTH FOR THE BONDS**

<b>Payment Date (January 15)</b>	<b>Amount</b>
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	