

RECREATION, LIBRARIES & AUTHORITIES COMMITTEE

12-0123R

RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH THE LAKE SUPERIOR CENTER AUTHORITY (LSCA) FOR THE USE OF LSCA PROPERTY ADJACENT TO BAYFRONT FESTIVAL PARK.

CITY PROPOSAL:

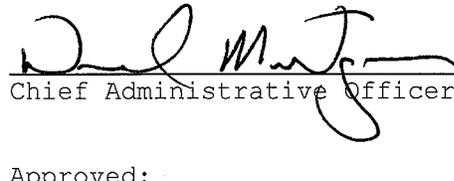
RESOLVED, that the proper city officials are hereby authorized to execute a three-year license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with the Lake Superior Center Authority (LSCA), to allow the city to use LSCA-owned property adjacent to Bayfront Festival Park (Park) for Park-related purposes, at no cost to the city.

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PARKS LP:slw 3/2/2012

STATEMENT OF PURPOSE: The purpose of this resolution is to approve a license agreement (Agreement) between the city and LSCA which allows the city use of LSCA-owned property adjacent to Bayfront Festival Park (Bayfront) for Bayfront-related purposes at no cost to the city. The city has entered into an agreement with the Duluth Entertainment Convention Center Authority (DECC) to manage events held at Bayfront. This Agreement with LSCA will simplify the management and operations of Bayfront by the DECC.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into by and between the CITY OF DULUTH (the "City"), and the LAKE SUPERIOR CENTER AUTHORITY ("LSCA").

The parties acknowledge the following:

A. The City owns certain property located in the Bayfront area of the City of Duluth known as Bayfront Festival Park upon which various festivals and activities occur ("Bayfront Festival Park").

B. LSCA owns certain property located in the Bayfront area of the City of Duluth adjacent to the Bayfront Festival Park.

C. It is anticipated that the City will enter into an Agreement with the Duluth Entertainment Convention Center Authority ("DECC") or other third party service provider to produce, promote, coordinate and manage special events held at Bayfront Festival Park.

D. The City desires to enter into this License Agreement to allow the use of LSCA's property adjacent to the Bayfront Festival Park for Bayfront Festival Park-related purposes.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. THE LICENSE. Subject to the terms and conditions set forth herein, LSCA grants to the City an exclusive license for the use and during the term set forth below in LSCA's property adjacent to Bayfront Festival Park as shown on Exhibit A (the "Licensed Premises"). Notwithstanding the foregoing, the parties acknowledge and agree that there may be certain dates on which LSCA desires to use the Licensed Premises for the benefit of LSCA (the "LSCA Use"). Any LSCA Use is subject to the prior written approval of the City's Chief Administrative Officer or designee (the "CAO"). LSCA shall provide the CAO with at least Ninety (90) days notice of its desire to use the Licensed Premises. The CAO will consult with the DECC to determine if LSCA's request can be granted. The CAO will provide LSCA with a written response to its request for a LSCA Use within ten (10) business days of the request.

2. USE OF THE LICENSED PREMISES. The Licensed Premises shall be used solely for purposes consistent with the use of Bayfront Festival Park including but not limited to food vendors, alcohol vendors and other concessionaires and business ventures.

3. THIRD PARTY AGREEMENTS. If the City enters into third party agreements for purposes consistent with the use of Bayfront Festival Park with respect to the Licensed Premises, such third party agreements shall require that the third party indemnify LSCA and name LSCA as an additional insured on its commercial general liability insurance and, if appropriate, its automobile insurance policies.

4. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on January 1, 2012, and shall continue until December 31, 2014.

5. LICENSE FEE. There shall be no license fee due under this Agreement.

6. TERMINATION. Either party may terminate this Agreement without cause upon one hundred thirty (130) days' written notice to the other party as provided for in Paragraph 16.

7. ALTERATIONS. LSCA shall not be obligated to make any alterations or improvements on or to the Licensed Premises.

8. MAINTENANCE. The City agrees to exercise reasonable care in the maintenance of the Licensed Premises during the term of this Agreement. The City shall surrender the Licensed Premises at the termination of this Agreement in the condition found prior to the commencement of this Agreement at no expense to LSCA, reasonable wear and tear excepted.

9. UTILITIES. The City shall be responsible for the cost of all utilities to the Licensed Premises.

10. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of agents, partners, joint venturers or associates between the parties hereto or as constituting the City as the employee of LSCA for any purpose or in any manner whatsoever.

11. THIRD PARTY SERVICE PROVIDERS. LSCA understands that the City contemplates entering into an Agreement with the DECC or another third party service provider to produce, promote, coordinate and manage special events held at Bayfront Festival Park to include the Licensed Premises. LSCA also understands that the City may enter into other agreements for the use of the Licensed Premises consistent with Bayfront Festival Park-related purposes. LSCA hereby consents to such agreements.

12. LAWS, RULES AND REGULATIONS. During the term of this Agreement, the City, agrees to operate or cause the operation of the Licensed Premises to be in compliance with the United States Constitution and with the laws,

rules, and regulations of the United States, State of Minnesota, St. Louis County and City of Duluth.

13. WAIVER. The waiver by the City or LSCA of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

14. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

15. NOTICES. Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to City of Duluth, 402 City Hall, 411 West First Street, Duluth, Minnesota 55802, ATTN: Chief Administrative Office ; and addressed to Lake Superior Center Authority, 353 Harbor Drive, Duluth, MN 55802, ATTN: Executive Director or to such other persons or addresses as the parties may designate to each other in writing from time to time.

16. APPLICABLE LAW AND VENUE. 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. All proceedings related to this Agreement shall be venued in St. Louis County, Minnesota.

17. AMENDMENTS. Any amendments 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.

18. AUTHORITY TO EXECUTE AGREEMENT. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

19. COUNTERPARTS AND DELIVERY. This Agreement may be executed in separate counterparts with the same effect as if all signatures were on the same Agreement. Delivery of an executed counterpart of this Agreement by electronic file or facsimile shall be as effective as delivery of an original executed counterpart hereof.

20. ENTIRE AGREEMENT. This Agreement, including Exhibit A, constitutes the entire Agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

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

LAKE SUPERIOR CENTER AUTHORITY

CITY OF DULUTH

By: _____
Its President

By: _____
Its Mayor

Date: _____

Date: _____

By: _____
Its Secretary

Attest: _____
City Clerk

Date: _____

Date: _____

Countersigned:

City Auditor

Date: _____

Approved as to form:

City Attorney

