

RECREATION, LIBRARIES, & AUTHORITIES COMMITTEE

12-0323R

RESOLUTION AUTHORIZING A FOUR YEAR AGREEMENT WITH SPIRIT MOUNTAIN RECREATION AUTHORITY AND DULUTH CROSS COUNTRY SKI CLUB FOR THE USE, OPERATION AND MANAGEMENT OF SPIRIT MOUNTAIN'S NORDIC CENTER.

CITY PROPOSAL:

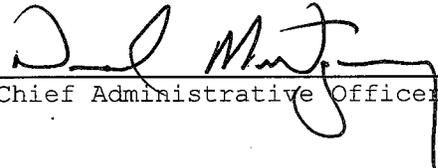
RESOLVED, that the proper city officials are authorized to execute and implement a four-year agreement with Spirit Mountain Recreation Authority and Duluth Cross Country Ski Club for the use, operation and management of Spirit Mountain Nordic Center, substantially the same as that on file with the city clerk as Public Document No. _____, at no cost to the city.

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

P&R KB:SW:ls 06/21/2012

STATEMENT OF PURPOSE: This resolution authorizes a four year-agreement for the use, operation and management of Spirit Mountain's Nordic Center. Under the terms of the agreement, Duluth Cross Country Club will coordinate use of the Nordic Center among the various user groups, provide the necessary staffing and participate in off-season trail maintenance. The city will be responsible for mowing the trails and providing routine grooming of the trails during the ski season. Spirit Mountain will provide and maintain the trail grooming equipment.

**AGREEMENT AMONG THE CITY OF DULUTH,
DULUTH CROSS COUNTRY SKI CLUB AND
SPIRIT MOUNTAIN RECREATION AREA**

"THIS AGREEMENT, effective as of the date of attestation by the City Clerk ("Effective Date"), is made by and among the **City of Duluth**, a municipal corporation under the laws of the State of Minnesota (hereinafter "City"), **Spirit Mountain Recreation Area Authority**, a separate public authority established by Minnesota legislature in 1973 by Chapter 327 ("Spirit Mountain") and the **Duluth Cross Country Ski Club**, a Minnesota non-profit corporation (hereinafter "Duluth XC"), collectively referred to as the "Parties". In consideration of the mutual covenants and conditions hereinafter contained, the Parties agree as follows:

I. RECITALS

WHEREAS, the City owns property on which Spirit Mountain Recreation Area is located; and

WHEREAS, Spirit Mountain operates the Spirit Mountain Recreation Area; and

WHEREAS, the Spirit Mountain Recreation Area contains a cross country ski area together with the building (the "Nordic Center"), various fixtures and personal property contained therein (hereinafter the "Premises"). Exhibit A is a map of the Premises; and

WHEREAS, Duluth XC desires to operate, manage and use the Premises for recreational and community advancement purposes; and

WHEREAS, Spirit Mountain and City desire to have Duluth XC operate, manage and use the Premises as described herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

II. RESPONSIBILITIES OF THE PARTIES FROM NOVEMBER 1 – MARCH 31:

2.1 Spirit Mountain will be responsible for the following:

- a. Providing at no cost or expense to Duluth XC the use of the Nordic Center as described herein.
- b. Paying for the cost of the utilities in the Nordic Center (heat, water, sewer, garbage pick-up and *electric) in an amount not to exceed the prior year's documented cost. In the event the cost of any of the foregoing utilities increase more than five percent (5%) from the previous year's cost, Duluth XC will be responsible for paying the overage amount exceeding the 105% of the prior year's

cost. Duluth XC will promptly reimburse Spirit Mountain for the additional utilities cost upon receipt of an invoice from Spirit Mountain.

- c. Snow plowing of the road to the Nordic ski area and the Nordic ski area parking lot when needed and in the priority order established by Spirit Mountain.
- d. Promoting all events at the Nordic Center on the Spirit Mountain web site.
- e. Allowing the City to use of Spirit Mountain's equipment for grooming and maintaining the cross country trails on the Premises only. The City will be responsible for fuel and oil utilized for these purposes.
- f. Allowing Duluth XC to use Spirit Mountain's equipment for grooming and trail maintenance of the Premises trails only, subject to the prior approval of the Spirit Mountain equipment operator. On or before November 1st Duluth XC will submit to Spirit Mountain for its approval a list of operators qualified to run the grooming equipment. Duluth XC agrees that any deviation from the list is prohibited without Spirit Mountain's prior written approval.
- g. Maintaining and repairing grooming equipment.

2.2 Duluth XC will be responsible for the following:

- a. Coordinating winter use of the Nordic Center among the various user groups including but not limited to local high school and college teams, youth ski leagues, and Duluth XC programs.
- b. Providing staff in sufficient numbers to support scheduled events.
- c. Regular cleaning, including restrooms and trash removal to maintain the Nordic Center in good condition over the winter/ski season
- d. Supplying the Nordic Center with necessary supplies (toilet paper, soap, paper towels, etc) in an amount sufficient to cover the activities described herein.
- e. Coordinating off-season work on the ski trails (in cooperation with the City)
- f. If applicable,* reimbursement to Spirit Mountain additional utilities cost as specified in section 2.1 b above.
- g. Shoveling snow on walkways from Nordic parking area to the Nordic Center in a timely manner and in accordance with the Duluth City Code. Duluth XC will coordinate the manpower and costs with Spirit Mountain.
- h. Ensuring that the Spirit Mountain equipment is used exclusively for Premises trail grooming and maintenance and remains at the Nordic Center.
- i. Returning the Nordic Center and Premises to Spirit Mountain at the end of the winter/ski season in good condition, with all Duluth XC equipment and supplies removed from the Premises.
- j. Promoting on Duluth XC's website activities and events relevant to cross-country skiing held at Premises.

2.3 City will be responsible for the following:

- a. Mowing the ski trails twice during the off-season

- b. Coordinating off-season trail work with Duluth XC
- c. Routine (up to 3 times per week) grooming of the ski trails during the winter/ski season using City and Spirit Mountain's equipment.
- d. Ensuring that the Spirit Mountain equipment is used exclusively for Premises trail grooming and maintenance and remains at the Nordic Center.
- e. Including the ski trails in the City's inventory listing, maps and on the City's website.

III. TERM AND TERMINATION

3.1 The term of this Agreement shall commence on the Effective Date, and shall end on March 31, 2016, unless earlier terminated as provided herein.

3.2 Any Party may terminate this Agreement upon ninety (90) days written notice. Notice shall be considered sufficient if delivered in person or mailed by regular United States mail, postage prepaid, addressed to the Parties at the addresses set forth in paragraph XIX or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time.

3.3 Upon termination of this Agreement, Duluth XC agrees to surrender the possession of the Premises to Spirit Mountain in as good condition and state of repair as at the time Duluth XC took possession of the Premises, except for reasonable wear and tear.

IV. MAINTENANCE AND OPERATION

4.1 Neither the City nor Spirit Mountain make any warranty, either express or implied, that the Premises or equipment thereon are suitable for any purpose and Duluth XC takes and occupies the Premises "as is."

4.2 Spirit Mountain and Duluth XC shall jointly inspect the Nordic Center and Premises on or before November 1 of each year to determine whether the Nordic Center and Premises are in all respects in proper condition for the use contemplated by Duluth XC. Spirit Mountain and Duluth XC shall jointly inspect the Nordic Center after the end of the season (March 31) to determine that they are returned in good condition and insure that all Duluth XC equipment and supplies removed from the Nordic Center and Premises.

4.3 Unless otherwise provided for herein, Spirit Mountain will be responsible for major repairs to the Premises, Nordic Center and equipment, including any repair work that requires a licensed or skilled trades person. If major repair work is required, Duluth XC shall promptly provide written notice to the Spirit Mountain so that Spirit Mountain can make the necessary repairs or arrange for a service provider of its choice to make the repairs.

V. COMMUNICATION

5.1 The parties agree that a full and complete exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regard to any services or other activities contemplated under this Agreement.

5.2 Duluth XC agrees to provide to the City's Park Manager a report on or before

November 1 identifying the scheduled activities to be held at the Premises during the ski/winter season including a copy of any brochures, advertisements, flyers, sample invites etc. promoting such activities. In addition, when applicable, Duluth XC will provide website link relating to the activity to the City for inclusion on the City's website.

5.3 Duluth XC agrees to provide the City with a post season summary report identifying all activities held on the Premises during the ski/winter season. The report will include statistics about the activity including date of the activity, name of activity, number of people in attendance and brief description of the activity.

VI. FINANCIAL ACCOUNTING AND REPORTING

6.1 Duluth XC agrees that all monies (paid admissions, rental fees, etc.) received (except proceeds from the Nordic Spirit Ski Race, a long standing fundraising event for Duluth XC) or collected by Duluth XC for usage of the Premises shall be separately managed and/or accounted for by Duluth XC in order to identify funds received or expended in the operation and maintenance of the Premises. Duluth XC further agrees that it shall keep this information in such a fashion that, at all times, an accurate accounting may be made by the City.

6.2 Duluth XC agrees to file with the City Auditor and the Parks and Recreation Division an annual itemized statement accurately showing all Duluth XC income and expenses related to the operation of the Premises. The statement shall be filed no later than May 1 of each year this Agreement remains in effect and shall include all required information from the previous year.

6.3 The annual itemized statement required above shall also include a current listing of all of all officers, board members and the official local contact person responsible for the administration of this Agreement, together with addresses and telephone numbers. Also, a copy of Duluth XC's current by-laws and articles of incorporation shall be provided to the City.

6.4 Pursuant to Minn. Stat. §16C.05, subd. 5, the books, records, documents and accounting procedures and practices of Duluth XC relevant to this Agreement shall be subject to examination by the State and/or Legislative Auditor, as appropriate, for a minimum of six (6) years.

VII. INSURANCE

7.1 During the entire term of this Agreement, Duluth XC shall procure and maintain continuously in force public liability insurance with limits of not less than One Million Five Hundred Thousand Dollars (\$1,500,000) Single Limit together with fire liability insurance with limits of not less than Two Hundred Thousand Dollars (\$200,000). The insurance company shall be authorized to do business in Minnesota.

7.2 The City of Duluth and Spirit Mountain shall be named on the policy of insurance as Additional Insureds. Duluth XC shall provide the City and Spirit Mountain with a certificate of insurance showing the required coverage. Duluth XC agrees that the policy of insurance cannot be cancelled or materially changed without thirty (30) days advance written notice to the City and Spirit Mountain.

VIII. ACCESS

8.1 Duluth XC shall permit the City and Spirit Mountain, and their respective officials, employees or agents to access and inspect the Premises at any time.

IX. NO DISCRIMINATION

9.1 Duluth XC agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

X. RELATIONSHIP OF PARTIES

10.1 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 of constituting any party as an agent, representative or employee of the other for any purpose or in any manner whatsoever. None of the parties or any officers or employees thereof shall be considered an employee of any other party, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of any party and their employees while so engaged and any and all claims whatsoever on behalf of any party arising out of employment or alleged employment, including without limitation, claims of discrimination against any party, its officers, agents, contractors or employees shall in no way be the responsibility of the other party. Neither the parties nor their officers, agents, contractors and employees shall 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 from another party.

XI. INDEMNIFICATION

11.1 Duluth XC shall defend, indemnify and hold harmless the City and Spirit Mountain and each of their respective officials, employees and agents (the "Indemnified Parties") from any liabilities, judgments, losses, costs or charges (including attorneys' fees) incurred by the Indemnified Parties as a result of any claim, demand, action or suit relating to any bodily injury (including death), loss or property damage caused by, arising out of, related to or associated with the use, management, maintenance or operation of the Premises by Duluth XC.

11.2 Duluth XC knows, understands and acknowledges the risks and hazards associated with using the Premises and hereby assumes any and all risks and hazards associated therewith. Duluth XC hereby irrevocably waives any and all claims against the Indemnified Parties for any bodily injury (including death), loss or property damage incurred by Duluth XC as a result of its use, management, maintenance or operation of the Premises and hereby irrevocably releases and discharges the Indemnified Parties from any and all claims of liability.

XII. IMMUNITY

12.1 Nothing in this Agreement is intended or should be construed as a waiver by the City or Spirit Mountain of any immunities, defenses or other limitations on liability to which the City or Spirit Mountain is entitled by law, including, but not limited to, the liability of limits under Minnesota Statutes Chapter 466.

XIII. MERGER CLAUSE

13.1 This Agreement constitutes the entire agreement between the parties and supercedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties. Any amendment, modification or supplementation 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.

XIV. APPLICABLE LAW

14.1 This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located in St. Louis County.

XV. THIRD PARTIES

15.1 No provision of this Agreement shall inure to the benefit of any third person so as to constitute any such person as a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

XVI. ASSIGNMENT

16.1 None of the parties shall assign or transfer any of its rights or interests under this Agreement.

XVII. WAIVER

17.1 The failure of the City or Spirit Mountain to enforce any provision of this Agreement shall not be construed as, nor 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.

XVIII. SEVERABILITY

18.1 The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

XIX. NOTICES

19.1 Notices required under the terms of this Agreement shall be addressed to the Parties as follows:

City of Duluth
Parks and Recreation Division
Attention: Kathy Bergen
12 East Fourth Street
Duluth, Minnesota 55805
Telephone: (218) 730-4309

Duluth Cross Country Club
Attention: Anne Flueckiger
1346 W. Arrowhead Rd., PMB 344
Duluth, MN 55811-2218
Telephone: (218) 728-3937

Spirit Mountain Recreation Area Authority
Attn: Renee Mattson
9500 Spirit Mountain Place
Duluth, MN 55810
Telephone: (218) 628-2891

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, duly authorized

CITY OF DULUTH

DULUTH CROSS COUNTRY CLUB

By: _____
Mayor

By: _____
Its: _____

ATTEST:

**SPIRIT MOUNTAIN RECREATION
AREA AUTHORITY**

City Clerk
Date: _____

By: _____
Its: _____

Approved as to form:

City Attorney

Countersigned:

City Auditor

EXHIBIT A