

FINANCE COMMITTEE

13-0073R

REPLACEMENT

RESOLUTION AUTHORIZING AN AGREEMENT WITH LAKE SUPERIOR
AND MISSISSIPPI RAILROAD COMPANY IN THE AMOUNT OF
\$20,000.

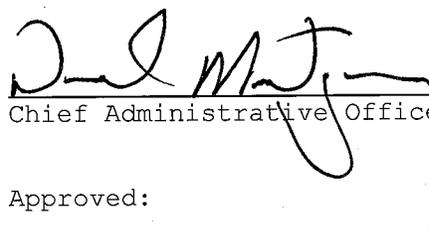
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form on file in the office of the city clerk as Public Document No. _____, with Lake Superior and Mississippi Railroad Company in an amount not to exceed \$20,000, payable from Fund 258, Agency 030, Account 5436-06 (Tourism Taxes, Finance, Tourism Tax Allocation Lake Superior and Mississippi Railroad Company).

Approved:


Department Director

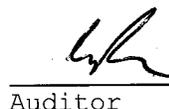
Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

FIN WP:le 02/01/2013

STATEMENT OF PURPOSE: This resolution authorizes an agreement with the Lake Superior and Mississippi Railroad Company (LSMRR) for year 2013 in order to support certain capital improvements and track maintenance for city of Duluth tourism activities. The LSMRR is an all volunteer, non-profit railroad which operates a scenic railway taking passengers along the edge of the St. Louis River Estuary, Spirit Lake and Mud Lake in West Duluth. The LSMRR operates over and maintains track which is owned by the city of Duluth and also a small portion of Burlington Northern Santa Fe freight track.

**AGREEMENT
BY AND BETWEEN
LAKE SUPERIOR AND MISSISSIPPI RAILROAD COMPANY
AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, by and between the CITY OF DULUTH (the "City"), a municipal corporation, hereinafter referred to as "City," and LAKE SUPERIOR AND MISSISSIPPI RAILROAD COMPANY (the "Railroad"), a non-profit corporation under the laws of Minnesota, hereinafter referred to as "Railroad."

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 Railroad desires to make certain capital improvements and track maintenance (the "Project") and is in need of financial assistance to fund the Project; and

WHEREAS, the City is willing to provide Railroad with funds to be used specifically for the Project (the "Funds"); and

WHEREAS, City and Railroad desire to enter into an agreement to outline the terms and conditions of the disbursement and acceptance of the Funds.

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

1. City will provide to the Railroad in 2013 an amount not to exceed \$20,000.00. Funds will be disbursed as requested by an authorized representative of Railroad, payable from Fund 258 (Tourism, Finance). Railroad shall use the Funds for the Project and shall not use the Funds for any other purpose without City's prior written approval. Any portion of the Funds unexpended at the completion of the Project shall be returned immediately to the City.

2. Railroad is required to keep a record of all receipts and expenditures relating to the use of the Funds and to provide the City with a written report summarizing the Project promptly upon completion of the Project or expenditure of the Funds. You also agree to provide any other information reasonably requested by the City

3. Any alterations, variations, modifications or waivers of terms of this Agreement shall be

binding upon the City and Railroad only upon being reduced to writing and signed by a duly authorized representative of each party.

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

5. Records shall be maintained by Railroad 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 Railroad that are related to this Agreement.

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

7. 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.

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

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

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

11. Railroad, 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.

12. Railroad 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.

13. 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.

14. Notice to City or Railroad 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 RAILROAD: Lake Superior and Mississippi Railroad Company
Andrew Webb, President
P.O. Box 16211
Duluth, MN 55816-0211

15. 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.

16. 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.

17. It is understood and agreed that the entire agreement of the parties including all exhibits, if any, 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.

18. 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.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

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

CITY OF DULUTH

**LAKE SUPERIOR AND MISSISSIPPI
RAILROAD COMPANY**

By _____
Mayor

By _____
Railroad Representative

Attest:

Its _____
Title of Representative
Date:

City Clerk
Date Attested: _____

Countersigned:

City Auditor

As to form:

City Attorney