

FINANCE COMMITTEE

13-0174R

RESOLUTION AUTHORIZING AN AGREEMENT WITH THE SPIRIT MOUNTAIN RECREATION AREA AUTHORITY, IN THE AMOUNT OF \$60,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with Spirit Mountain Recreation Area Authority in an amount not to exceed \$60,000, payable from Fund 258, Agency 030, Account 5436-07 (Tourism Taxes, Finance, Tourism Tax Allocation Spirit Mountain).

Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

FIN WP:SW:le 04/11/2013

STATEMENT OF PURPOSE: This resolution authorizes an agreement with Spirit Mountain Recreation Area Authority (Spirit Mountain) for an amount not to exceed \$60,000 from the tourism tax fund. Under the terms of the agreement, Spirit Mountain will use the funds to develop a downhill mountain bike trail system allowing it to proceed with its vision of a four-season outdoor adventure recreation center for citizens and visitors. The council previously approved allocating \$60,000 for this project on Resolution 13-0123R.

**AGREEMENT
BY AND BETWEEN
SPIRIT MOUNTAIN RECREATION AREA AUTHORITY
AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, by and between the City of Duluth ("City"), and Spirit Mountain Recreation Area Authority ("Spirit Mountain").

WHEREAS, by various legislation the City has provided for the imposition of taxes on certain hotel/motel accommodations and certain food and beverage transactions (Food and Beverage Tax) and provided that certain of the proceeds of said Food and Beverage Tax collected are to be placed in Fund 258 and related funds and accounts to be expended by the City for advertising and promoting the City of Duluth as a tourist and convention center; and

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

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

WHEREAS, in accordance with its Master Plan, Spirit Mountain is in the process of expanding its recreation opportunities provided to the City's citizens and visitors to include downhill mountain bike trail system; and

WHEREAS, the City recognizes that programs, recreational opportunities and events that take place at the Spirit Mountain Recreation Area promote the City of Duluth as a tourism center and add to the quality of life for visitors and residents alike, and

WHEREAS, the City desires to enter into a contract with Spirit Mountain pursuant to which the Spirit Mountain will develop the downhill mountain bike trail system allowing it to proceed with its vision of a four season outdoor adventure recreation center for citizens and visitors.

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

1. The services set forth in Paragraph 2 below shall be furnished by Spirit Mountain commencing January 1, 2013 through December 31, 2013, inclusive.
2. Spirit Mountain shall use the funds provided for in paragraph 3 for the development of a downhill mountain bike trail in accordance with its Master Plan of creating a four season outdoor recreation area.

3. City will provide to the Spirit Mountain in 2013 an amount not to exceed \$60,000.00. Funds will be disbursed to Spirit Mountain as evidenced by invoices or other documentation of cost to build the downhill mountain bike trail, payable from Fund 258, Agency 030, Acct. 5436-08 (Tourism, Finance). It is understood and agreed that the City shall be obligated to provide payment to Spirit Mountain only to the extent that sufficient taxes are derived from the Food and Beverage Tax, which are designated by the City Council to be placed in Fund 258 and related funds and accounts. In the event that insufficient taxes are derived from the Food and Beverage Tax, the City shall have the right in its sole and unfettered discretion to reduce or eliminate the funding available to the Spirit Mountain under this Agreement or to terminate or otherwise modify this Agreement.

4. Spirit Mountain shall provide a final report in a format acceptable to the City Auditor on the bike trail project within 30 days of project completion or no later than December 1, 2013. Any funds not spent will be retained by the City. City retains all its powers to determine how the public monies shall be used, and it may require reasonable changes in the marketing plan, work program outline, or use of the money, based upon circumstances. City may cancel this Agreement by giving 90 days written notice to Spirit Mountain.

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

6. Assignment. Spirit Mountain will not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever.

7. Records and Inspection. Records shall be maintained by Spirit Mountain 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 Spirit Mountain that are related to this Agreement.

8. 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.

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

10. Spirit Mountain, 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.

11. Spirit Mountain 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.

12. 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.

13. Notice to City or Spirit Mountain 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.

City of Duluth
Attn: CAO
Room 402 City Hall
411 West First Street
Duluth, MN 55802

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

14. 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.

15. 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.

16. It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

17. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

CITY OF DULUTH-

**SPIRIT MOUNTAIN RECREATION
AREA AUTHORITY**

By _____
Mayor

By: _____
Its: _____

Attest:

By: _____
Its: _____

City Clerk
Date Attested: _____

Countersigned:

City Auditor

As to form:

City Attorney