

FINANCE COMMITTEE

14-0126

RESOLUTION AMENDING AND RENEWING JOINT POWERS AGREEMENT 20604 WITH DULUTH ENTERTAINMENT AND CONVENTION CENTER AUTHORITY FOR OPERATION OF MINNESOTA SLIP PEDESTRIAN DRAW BRIDGE DURING YEAR 2014 FOR AN AMOUNT NOT TO EXCEED \$36,725.26.

CITY PROPOSAL:

RESOLVED, that the city desires to renew the joint powers Agreement 20604 with the Duluth Entertainment and Convention Center (DECC) authority for the operation of the Minnesota Slip pedestrian draw bridge during year 2014 for a total amount not to exceed \$36,725.26, payable from the Tourism Taxes Fund 258, Finance 030, Contract Services 5310;

FURTHER RESOLVED, the parties desire to amend the agreement to update certain clauses of the agreement.

NOW THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to execute an amendment to the agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____.

Approved:



Department Director
Purchasing Agent 

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

STATEMENT OF PURPOSE: This resolution renews the multi-year joint powers Agreement 20604 with the Duluth Entertainment and Convention Center authority for the operation of the Minnesota Slip pedestrian bridge during year 2014 for an amount not to exceed \$36,725.26. The increase of \$284.24 over 2013 is based on an inflation factor as outlined in the current contract with the DECC. In addition, this resolution amends the original contract, extending the term to December 2016, modifying the indemnification clause, and correcting typographical errors in the agreement.

The city published the original request for proposals (RFP) in November 2005, and invited eight vendors to submit RFPs. The DECC was the only vendor to submit a proposal. Both the city and DECC signed a contract for the 2006 and 2007 operating seasons. Then, in 2008, both parties signed a contract with two significant changes below:

- (a) automatic renewal each year with city council approval if neither party receives a termination notification by November; and
- (b) annual contract increases limited to the implicit price deflator (IPD) for Minnesota governmental purchases.

The DECC has been operating the bridge for the city since 2001.

Requisition No. 14-0236

AMENDMENT TO JOINT POWERS AGREEMENT C20604

THE CITY OF DULUTH

AND

DULUTH ENTERTAINMENT & CONVENTION AUTHORITY

The Agreement #20604 (the "Agreement") between City of Duluth ("City") and Duluth Entertainment & Convention Authority ("DECC") relating to the operation and maintenance of the pedestrian draw bridge over the Minnesota Slip is amended as set forth below. Capitalized terms used in this Amendment but not defined herein shall have the meanings ascribed to them in the Agreement.

WHEREAS, the City and DECC wish to amend the Agreement to modify the indemnification clause and correct typographical errors in the Agreement.

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

1. Subparagraph 3.A. (1) is amended in its entirety to read:

(1) Basic Term

The Basic Term of this Agreement shall commence as of January 1, 2014, and continue through December 31, 2016, unless sooner terminated as provided herein. Either party may terminate this Agreement between November 1 of each year and March 31 of the succeeding year by providing the other party thirty (30) days written notice.

2. Paragraph 9. A. (Indemnity) of the Agreement is deleted in its entirety and replace with the following:

A. Indemnity.

(1) DECC shall defend, indemnify and hold harmless, City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons including agents or employees of City or of DECC, by reason of death of or injury to person or persons or the loss of or damage to property arising out of DECC's negligence or willful misconduct in the performance of its obligations under this Agreement. An on thirty (30) days written notice from City, DECC will appear and defend all such lawsuits against City.

(2) City shall defend, indemnify and hold harmless, DECC and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons including

agents or employees of City or of DECC, by reason of death of or injury to person or persons or, the loss of or damage to property or the loss of revenue of the charter boats, Vista Boat, or any other boat for hire occupying the Minnesota Slip arising out (i) of any malfunctions or mechanical or structural defects, or failures of the Bridge or (ii) the performance by Operator of any tasks directed by the Director or Chief Operator as described in paragraph 2.H.

- 3. Paragraph 3. B. (3) (b) is revised as follows to correct an incorrect paragraph reference:
 - (b) The DECC may, in the exercise of its discretion, operate the Bridge during any time period it deems necessary, provided no additional payment of any kind shall be payable to the DECC by virtue of such operation. Additionally, when operating the Bridge, DECC personnel shall comply with the requirements of Paragraph 4 below.
- 4. Paragraph 8 A. and B. are revised as follows to correct an incorrect paragraph reference:
 - A. Terminate this Agreement and refuse to make further payments under Paragraph 5 above.
 - B. Demand and be entitled to receive repayment for any sums paid DECC pursuant to Paragraph 5 above not property earned by DECC.
- 5. Except as specifically amended pursuant to this Amendment, the Agreement remains in full force and effect. In the event of a conflict between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment shall govern.

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

CITY OF DULUTH

DULUTH ENTERTAINMENT AND CONVENTION CENTER AUTHORITY

By: _____
Its Mayor

By: _____

Attest: _____
Its City Clerk

Its _____

Countersigned:

By: _____

By: _____
Its City Auditor

Its _____

Approved as to form:

By: _____
Its City Attorney