RESOLUTION 14D-24

RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH GRANDMA'S MARATHON-DULUTH, INC. FOR THE USE OF DEDA PARKING LOTS IN YEARS 2014, 2015 AND 2016

RESOLVED by the Duluth Economic Development Authority (DEDA) that the proper DEDA officials are hereby authorized to execute a license agreement, substantially in the form of the copy attached hereto (DEDA Contract No. _____), with Grandma's Marathon-Duluth, Inc. for use of the Northwest Iron Lot, the Lighthouse Lot, and a portion of the Lake City Lot for Grandma's Marathon activities in the years 2014, 2015 and 2016 at no cost.

Approved by the Duluth Economic Development Authority this 28th day of May 2014.

ATTEST:

APPROVED AS TO FORM

DEDA Attorney

APPROVED FOR PRESENTATION

Executive Director

_____

Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize a license agreement with the nonprofit corporation, Grandma's Marathon-Duluth, Inc., allowing the use of the Northwest Iron Lot, the Lighthouse Lot, and a portion of the Lake City Lot for Grandma's Marathon activities. Grandma's Marathon will use the Northwest Iron Lot for nine days and the Lighthouse Lot and a portion Lake City Lot for three days each summer during 2014, 2015 and 2016. DEDA has allowed this use for a number of years. In exchange for such use, Grandma's Marathon will promote DEDA as a contributing sponsor of the event.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT entered into this _____ day of _____, 2014, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY (DEDA), and GRANDMA'S MARATHON-DULUTH, INC. (Licensee).

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

1. The License

Subject to the terms and conditions set forth herein, and to the extent of DEDA's rights and interest in the Northwest Iron Lot, the Lighthouse Lot and a portion of the Lake City Lot as shown on Exhibit A attached hereto and made a part hereof (the Property), DEDA grants to Licensee a non-exclusive License in the Property for use and term set forth below.

2. Use of the Property

The Property shall be used solely for purposes of a runners' recovery area, afternoon and evening entertainment, food sales, medical and sponsorship tents, merchandise sales, and miscellaneous marathon activities all related to Grandma's Marathon.

3. Term

With respect to Licensee's general activities for the marathon in the Northwest Iron Lot, the term of this License shall be from Monday, June 16, 2014, through Tuesday, June 24, 2014; Monday, June 15, 2015, through Tuesday, June 23, 2015; and Monday, June 13, 2016, through Tuesday, June 21, 2016. With respect to activities in the Lighthouse Lot and a portion of the Lake City Lot, the term of this License shall be from Friday, June 20, 2014, through Sunday, June 22, 2014; Friday, June 19, 2015, through Sunday, June 21, 2015; and Friday, June 17, 2016, through Sunday, June 19, 2016. Time is an essential element of this Agreement. In the event that Licensee shall fail to surrender the Property at the termination of any of the above periods, Licensee hereby agrees to pay DEDA $1,000 per day per lot until such time as Licensee surrenders the Property in the condition found prior to the commencement of this License including repair of stake holes in the asphalt. This Agreement may be terminated with or without cause by either party upon sixty (60) days' prior written notice to the other.

4. DEDA Warranty

DEDA makes no representation that the property is suitable for specific uses and Licensee accepts the Property in an "as is" condition without representations or warranties of any kind, and DEDA shall not be obligated to make any alterations or improvements on or to the Property.

5. Maintenance

Licensee agrees to exercise reasonable care in the maintenance of the Property during the term of this License. Licensee shall surrender the Property at the termination of this License in the condition found prior to the commencement of this License, including repair of stake holes in the asphalt, at no expense to DEDA. In the event Licensee fails to surrender the Property in the condition found prior to the commencement of this License, DEDA may require the Property to be brought into said condition, and Licensee shall pay for the costs thereof immediately upon request. Licensee shall not make any alterations or improvements to the property without the prior written consent of DEDA's Executive Director (the Executive Director). Licensee agrees to pay upon demand any damage done to the Property during the term of this License. Licensee agrees to work with the Executive Director to explore alternative methods of securing tents to reduce the number of stake holes required.

6. In Kind Payment

In consideration for the License for the use of the Property, Licensee shall provide the following for years 2014, 2015 and 2016:

a. Licensee will include the logo for DEDA on the online registration forms for Grandma's Marathon, Garry Bjorklund Half Marathon, William A. Irvin 5K, Fitger's 5K, Park Point 5-Miler and Grandma's Minnesota Mile Duluth.

b. Licensee will recognize DEDA as a contributing sponsor in its electronic newsletter, *Out Front.*

c. Licensee will recognize DEDA as a contributing sponsor in the Marathon edition newspaper, *Grandma's Gazette, starting 2015.*

d. Licensee will provide DEDA with (1) complimentary ad in the Marathon edition newspaper, *Grandma's Gazette, starting in 2015.*

e. Licensee will provide DEDA with opportunity to place a flyer or informational brochure in each Grandmas' Marathon volunteer packet (approximately 4000 copies).

f. Licensee will provide DEDA with the opportunity to place a flyer or informational brochure in each runner's race packet for year 2014 (17,000 pieces provided to the Marathon office by June 1 for the 2014 race) and for future contracted years of this agreement.

g. Licensee will recognize DEDA as a contributing sponsor in the *Grandma's Marathon Weekend Activity Guide.*

h. Licensee will recognize DEDA as a contributing sponsor on Grandma's Marathon and Garry Bjorklund Half Marathon Awards Ceremony program.

i. Licensee will recognize DEDA as a contributing sponsor in our *Race Results Magazine.*

j. Licensee will provide DEDA with (1) complimentary ad (3 ½" x 3 ½", b/w) in our *Race Results Magazine.*

k. Licensee will provide DEDA with one complimentary booth (if available in 2014) at the Health and Fitness Expo and for future contracted years of this agreement.

l. Licensee will place banners, provided by DEDA, in strategic locations at the finish line, activity area, spaghetti dinner and health and fitness expo at the DECC.

m. Licensee will include DEDA's name and tag line on the Jumbo Tron Display Board set up in Canal Park during Marathon weekend.

n. Licensee will prominently display the logo for DEDA on the Grandma's Marathon website, with a direct link to DEDA's website, when the new updated website goes live.

o. Licensee will recognize DEDA as a contributing sponsor during:

   i. Pre-race Activities
   ii. Finish Line Commentary

iii. Awards Ceremony

p. Licensee will offer DEDA the option to further promote its sponsorship role with Grandma's Marathon via advertisements, commercials, posters, etc.

q. Licensee will promote DEDA at every possible opportunity throughout the year.

7. Indemnification

DEDA, ETOR Properties, LLC, St. Croix, Inc. and the City of Duluth (the "City") shall in no way be liable or responsible for any accident or damage that may occur in the use of the Property during the term of this License. The Licensee agrees that it shall defend, indemnify and save harmless, DEDA, ETOR Properties, LLC, St. Croix, Inc. and the City, their 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 DEDA, ETOR Properties, LLC, St. Croix, Inc., the City or the Licensee by reason of the death of or injury to person or persons or the loss of or damage to property or any cause of action arising out of the use or occupancy of the Property. On ten (10) days' written notice from DEDA, the Licensee will appear and defend all lawsuits against DEDA, ETOR Properties, LLC, St. Croix, Inc., and the City growing out of such injuries or damages.

8. Insurance

Licensee shall provide for purchase and maintenance of such insurance as will protect Licensee, DEDA, ETOR Properties, LLC, St. Croix, Inc. and the City against risk of loss or damage to the Property and any other property permanently located or exclusively used at the Property and against claims which may arise or result from the maintenance and use of the Property during the term of the License. Licensee shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Licensee's occupancy of or use of the Property, carried in the name of Licensee. During the term of this License, Licensee shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than $1,500,000 aggregate per occurrence for personal bodily injury and death, and limits of $1,500,000 for property damage, and Liquor Liability in limits of not less than $1,500,000. If person limits are specified, they shall be for not less than $1,500,000 per person and be for the same coverages. Insurance shall cover:

a. Public liability, including premises and operations coverage;

b. Independent contractors--protective contingent liability;

c. Personal injury;

d. Owned, non-owned and hired vehicles;

e. Contractual liability covering the indemnity obligations set forth herein;

f. Products--completed operations; and

g. Liquor Liability.

Additionally, Licensee shall maintain Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law.

DEDA reserves the right and Licensee agrees to revisions upward in the minimum insurance requirements hereinafter set forth, and to provide evidence of such increased insurance coverage, to the extent that the liability limits as provided in Minnesota Statute Section 466.04 are increased.

All insurance required in this agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

Licensee shall provide to DEDA a Certificate of Insurance evidencing said coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The Certificate of Insurance for Public Liability and Liquor Liability shall name DEDA, ETOR Properties, LLC, St. Croix, Inc. and the City as additional insureds. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Licensee's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DEDA will render any such change or changes in said policy or coverages ineffective as against DEDA,

ETOR Properties, LLC, St. Croix, Inc. and the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent, as approved by the Duluth City Attorney's Office.

9. Independent Contractor

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting the Licensee or any of its officers, agents, servants and employees as an officer, agent, servant, representative or employee of DEDA, ETOR Properties, LLC, St. Croix, Inc. or the City for any purpose or in any manner whatsoever. The Licensee's officers, agents, servants and employees shall not be considered employees of DEDA, ETOR Properties, LLC, St. Croix, Inc. or the City, and any and all claims which may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said officers, agents, servants and employees while engaged in performing any work under this Agreement, and any and all claims whatsoever on behalf of said officers, agents, servants and employees arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of DEDA, ETOR Properties, LLC, St. Croix, Inc. or the City. The Licensee's officers, agents, servants and employees shall not be entitled to any compensation or right or benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay.

10. Assignment

Licensee shall not assign its interest under this License Agreement or any part hereof without the prior written consent of the Executive Director.

11. Notices

Any notice to be given by either party shall be deemed to be properly served if deposited with the United States Postal Service, or other acceptable mailing service, postage prepaid, addressed to Licensor as follows: Duluth Economic Development Authority, 411 West First Street, Room 402 City Hall, Duluth, MN 55802; and to Licensee as follows: Grandma's Marathon, Inc., P.O. Box 16234, Duluth, MN 55816.

12. Compliance with Laws, Rules and Regulations

Licensee agrees to observe, comply and abide with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City

and their respective agencies now in effect or hereafter promulgated which are applicable to its activities under this License Agreement. Licensee shall procure at its own expense all licenses, permits or other rights required for the activity contemplated by this License Agreement.

13. Choice of Law and Venue

All questions concerning the interpretation or application of provisions of this License shall be decided according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.

14. No Third Party Claims

Except as is specifically set forth herein, this Agreement is to be construed and understood solely as an Agreement between DEDA and the Licensee and shall not be deemed to create any rights in any other person. Except as is specifically set forth herein, no person shall have the right to make claim that she or he is a third party beneficiary of this License Agreement or of any of the terms and conditions hereof, which, as between DEDA and the Licensee, may be waived at any time by mutual agreement between DEDA and the Licensee.

15. Limitation of Liability

DEDA's liability shall be governed by the provisions of the Minnesota Municipal Limitation of Liability Statute, Minnesota Statute Section 466 et. seq.

16. Amendments

Any amendments to this License Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

17. Termination By DEDA

In the event of termination of the Canal Park Parking Agreement between DEDA and ETOR Properties Limited Liability Company for the Northwest Iron Lot (Contract Number 13 865 615(1)), or the termination of the Ground Lease for Parking between DEDA and St. Croix, Inc. for the Lake City Lot, DEDA may terminate this Agreement upon written notice to Licensee stating the date of such termination.

18. Entire Agreement

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

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

DULUTH ECONOMIC DEVELOPMENT	GRANDMA'S MARATHON-DULUTH, INC.
_____	_____
Its President	
	Its _____
_____	
Its Secretary	

This instrument was drafted by:

Joan Christensen
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