

EXHIBIT 1

AGREEMENT FOR PROFESSIONAL SERVICES BY AND BETWEEN MINNESOTA LAND TRUST AND CITY OF DULUTH

THIS AGREEMENT FOR PROFESSIONAL SERVICES (this “Agreement”) is by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as the “City,” and Minnesota Land Trust, a Minnesota non-profit corporation, hereinafter referred to as “MLT.”

WHEREAS, the City is Minnesota’s outdoor recreation epicenter and has a vision is to become one of America’s premier trail and outdoor recreation destinations by using its outdoor recreation amenities to improve neighborhood quality of life, stimulate economic development, and enable all citizens, regardless of income or physical ability, to access and enjoy Duluth’s natural environment (the “Vision”); and

WHEREAS, in pursuit of the Vision, the City has made major investments in the development of outdoor recreation facilities, particularly in the St. Louis River Corridor; and

WHEREAS, to ensure these investments bear fruit, the City has engaged with MLT for the last several years to advise and support the City on the development of destination-quality outdoor recreation facilities, the promotion of Duluth as an outdoor adventure capitol, the establishment of productive strategic partnerships with user groups, and, more recently, the creation and support of programs to ensure all Duluth residents can access and enjoy our outdoor amenities; and

WHEREAS, the City desires to continue to utilize MLT’s professional services to further develop and maintain its Vision and enhance Duluth’s outdoor adventure experiences; and

WHEREAS, MLT represents that it is qualified and willing to perform these services under the terms and conditions hereinafter set forth.

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

I. Services

MLT will provide the services identified on the attached Exhibit A and other professional services generally related thereto as the City’s staff may, from time to time, request (the “Services”). Exhibit A may be amended by mutual written agreement to ensure that the City and MLT are prioritizing the most essential tasks. In the event of a conflict between Exhibit A and the remainder of this Agreement, the terms and conditions of the remainder of this Agreement shall be deemed controlling. The total budget for the Services is set forth in the budget section of Exhibit A.

II. Fees

1. City Fees

In consideration of MLT's provision of the Services, the City agrees to pay MLT up to a maximum total amount of \$135,000.00 during the Term (defined below), payable from Fund No. 258-030-5436-11 (Tourism Tax Fund, Finance, Tourism Tax Allocation Advertising & Publicity). The amount paid to MLT each calendar year during the Term is further limited to the "Total City Contract" amount listed in each column in the budget table contained in Exhibit A. The types of expenses for which MLT will be eligible for payment include the following: salaries and benefits, supplies, equipment, equipment rental, office and non-office materials, printing, postage, travel and contracted services, as shown in the budget set forth in Exhibit A. All bills for services rendered shall be submitted to the City's Director of Public Administration. All bills for services rendered shall be submitted no more frequently than monthly and shall be accompanied by such documentation as the City shall reasonably request. Upon receipt of each bill for services rendered and the required documentation, the City shall pay MLT for the Services, subject to the maximum amounts set forth above and on Exhibit A, and subject to the provisions of this Agreement.

2. MLT Contribution

During the Term, MLT shall contribute at least \$40,000 worth of Services either on an in-kind basis or paid by other third-party funding as may be obtained by MLT (the "In-Kind Services"), as set forth in the budget section of Exhibit A. The In-Kind Services shall be documented in the same manner as the Services that are billed to the City, with copies provided to the City's Director of Public Administration in the same manner as bills for services rendered.

III. General Terms and Conditions

1. Amendments

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

2. Assignment

MLT represents that it will utilize only its own personnel in the performance of the Services (or other third party personnel with prior written consent by the City); and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City.

3. Data and Confidentiality, Records and Inspection

- a. To the extent permitted by law, the City agrees that it will make available all pertinent information, data and records under its control for MLT to use in the performance of this Agreement, or to assist MLT wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by MLT pursuant to this Agreement will be confidential and will not be released by MLT without prior authorization from the City.

- c. MLT represents and warrants that the work product created or prepared by MLT and its employees and contractors (i) will be original; (ii) will not infringe upon the rights of any third parties; and (iii) will not have been previously assigned, licensed or otherwise encumbered. Either MLT and Hans Johnson (as co-owners) or MLT (exclusively), will be the owners of all intellectual property created or prepared pursuant to this Agreement (intellectual property includes but is not limited to all work product and documents such as data, text, photographs, databases, computer programs, notes, designs, drawings, specifications, materials, summaries). MLT grants the City perpetual, unrestricted use of all intellectual property created or prepared pursuant to this Agreement.
 - d. Records shall be maintained by MLT 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 after receipt of final payment by MLT under this Agreement.
 - e. MLT will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
 - f. MLT shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
 - g. MLT shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. MLT will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.
4. MLT Representations and Warranties
MLT represents and warrants that:
- a. MLT and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
 - b. MLT and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provision of the Services.
 - c. MLT has complied or will comply with all legal requirements applicable to it with respect to this Agreement.
 - d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the MLT

- is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of MLT contrary to the terms of any instrument or agreement.
- e. There is no litigation pending, or to the best of MLT's knowledge threatened, against MLT affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of MLT to perform its obligations hereunder.
 - f. MLT will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.
5. Term and Termination
- A. Notwithstanding the date of execution, the term of this Agreement shall commence on July 1, 2017 and shall remain in effect until December 31, 2019, or until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first, unless terminated earlier as provided for herein (the "Term").
 - B. Either party may, by giving thirty (30) days written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by MLT under this Agreement shall become the property of the City (except as provided in Section 3.c. above), and MLT shall promptly deliver the same to the City. MLT shall be entitled to compensation for the Services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by MLT, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the Services which gave rise to such breach.
6. Independent Contractor
- a. 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 MLT 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. MLT and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of MLT's employees while so engaged, and any and all claims whatsoever on behalf of MLT's employees arising out of employment shall in no way be the responsibility of the City. MLT's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from the City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay or P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless MLT from liability or judgments arising out of MLT's intentional or negligent acts or

omissions of MLT or its employees while performing the work specified by this Agreement.

- b. 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.
- c. MLT expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

To the extent allowed by law, MLT shall defend, indemnify and hold the 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: (a) MLT's breach of this Agreement; (b) MLT's negligence or misconduct or that of its agents or contractors in performing the Services; (c) any claims arising in connection with MLT's employees or contractors; or (d) the use of any materials supplied by MLT to the City unless such material was modified by the City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance

MLT shall obtain and maintain for the Term the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota:

- a. Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, in a company approved by the City; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. The City shall be named as an Additional Insured by endorsement under the Public Liability and Automobile Liability, or as an alternate, MLT may provide Owners-Contractors Protective policy, naming itself and the City. Upon execution of this Agreement, MLT shall provide Certificates of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional liability insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, MLT agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- c. MLT shall provide evidence of Statutory Minnesota Workers' Compensation Insurance.

- d. Certificates showing continued maintenance of all required insurance shall be on file with the City during the Term.
- e. The City does not represent or guarantee that these types or limits of coverage are adequate to protect MLT's interests and liabilities.

9. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City: City of Duluth
Attn: Director of Public Administration
411 W First Street, Room 402
Duluth, MN 55802

MLT: Minnesota Land Trust
Attn: Executive Director
2356 University Avenue West, Suite 240
St. Paul, MN 55114

10. Civil Rights Assurances

MLT, 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. 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. Laws, Rules and Regulations

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

12. Applicable Law

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. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of nature, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage,

accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

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. Entire Agreement

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.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

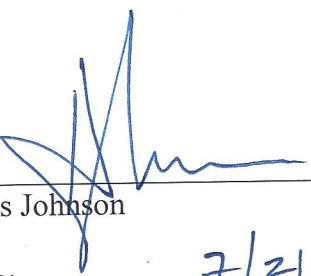
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**HANS JOHNSON
ADDENDUM
TO AGREEMENT FOR
PROFESSIONAL SERVICES
BY AND BETWEEN
MINNESOTA LAND TRUST
AND
CITY OF DULUTH**

As co-owner of certain intellectual property to be created or prepared pursuant to the Agreement for Professional Services to which this Addendum is attached (the "Agreement"), I grant the City of Duluth perpetual, unrestricted use of all intellectual property created or prepared by me and paid for by the City of Duluth pursuant to the Agreement.

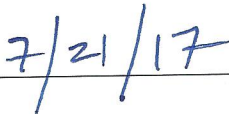
As used in this Addendum, intellectual property includes but is not limited to all work product and documents such as data, text, photographs, databases, computer programs, notes, designs, drawings, specifications, materials and summaries.

By:



Hans Johnson

Date:



7/21/17

EXHIBIT A



Minnesota Land Trust

Scope of Work for Advancing Duluth's Outdoor Recreation Investments July 2017—December 2019

Project Description:

The City of Duluth's vision is to become one of America's premier outdoor recreation destinations and use its outdoor recreation amenities to improve neighborhood quality of life, stimulate economic development, and enable all citizens, regardless of income or physical ability, to access and enjoy Duluth's natural environment. In pursuit of this vision, the City has made major investments in the development of outdoor recreation facilities, particularly in the St. Louis River Corridor.

To ensure these investments bear fruit, the City of Duluth has engaged the Minnesota Land Trust (MLT) for the last several years to advise and support the City of Duluth on the development of destination-quality outdoor recreation facilities, the promotion of Duluth as an outdoor adventure capitol, the establishment of productive strategic partnerships with user groups, and, more recently, the creation and support of programs to ensure all Duluth citizens can access and enjoy our outdoor amenities.

The Scope of Work below is intended to outline the categories of assistance which the Minnesota Land Trust will provide under this new phase of the partnership. This Work Plan may be amended annually or as otherwise needed by mutual agreement to ensure that the City and Land Trust are prioritizing the most essential tasks.

Proposed Tasks and Deliverables:

1. Development of Destination-Quality Outdoor Recreation Facilities:

MLT will help the City and partner outdoor user groups to substantially complete the following projects to the point that they are fully operational. Tasks include assistance to solidify partnerships with nonprofit user groups, raise funds from sources with whom MLT has strong relationships, complete facility planning and construction, begin destination promotion, and advise or assist on recreation-related land protection or restoration. MLT and the City will identify specific priorities and tasks for MLT assistance in each of these projects.

- a. Quarry Park
- b. St. Louis River Waterfront
 - i. National Water Trail designation
- c. Grand Avenue Nordic Center
- d. Duluth Traverse
- e. Other potential venues as directed

2. Promotion and Marketing for Duluth as Outdoor Recreation Destination:

MLT will help the City, Visit Duluth, outdoor user groups and/or others to draw more visitors for longer visits to Duluth's outdoor recreation amenities and better inform visitors before and during their visits about how to enjoy their outdoor experiences in Duluth. This includes specific assistance for the following:

- a. The development of an internet-based visitor information delivery strategy which will unify information for Duluth's outdoors.
- b. Cultivation of outdoor recreation media and branding support.
- c. Serve as a liaison and ambassador for select groups, media or conferences coming to Duluth which have a connection to Duluth's outdoors.

3. Advance efforts to ensure equity in Duluth's outdoors:

To ensure that the City's outdoor infrastructure is available to people of all economic and social backgrounds, MLT will assist the City, Duluth Youth Outdoors, user groups and others in examining the solutions to bridge the "Adventure Gap" and ensure equity of access so that the health and social benefits of outdoor recreation are available to all.

Budget:

This proposal is a cost reimbursable, time and effort contract. The total project cost for the this phase of the partnership, from July 2017 to December 2019, is scheduled not to exceed \$175,000, with the City providing up to \$135,000 and MLT providing at least \$40,000.

Cost Category	July— December 2017	January— December 2018	January— December 2019
Salaries and benefits	45000	80,000	35,000
Supplies/Equipment/Printing/Postage	250	500	250
Non-office materials	2000	3000	1000
Travel	250	250	0
Contracted Services	2500	3250	1750
Total Project Costs:	\$50,000	\$87,000	\$38,000
Total MLT Contribution	\$12,000	\$15,000	\$13,000
Total City Contract	\$38,000	\$72,000	\$25,000