

Attachment A

**AGREEMENT  
BETWEEN  
THE CITY OF DULUTH  
AND  
VISIT DULUTH**

THIS AGREEMENT by and between the CITY OF DULUTH, a Minnesota municipal corporation, hereinafter referred to as the "City", and VISIT DULUTH, a Minnesota non-profit corporation ("Visit Duluth").

WHEREAS, by various legislation the City has provided for the imposition of taxes on certain hotel/motel accommodations and certain food and beverage transactions; and

WHEREAS, certain of the proceeds of such taxes collected are to be placed in Fund 0258; and

WHEREAS, the City is authorized to spend public funds for advertising and promoting the City of Duluth as a visitor, tourist and convention destination; and

WHEREAS, it is the desire of the City to have Visit Duluth provide advertising and promotional services promoting the City of Duluth as a visitor, tourist and convention destination;

NOW, THEREFORE, it is hereby mutually agreed by and between the parties to this Agreement as follows:

1. TERM – The term of this Agreement shall be for the period January 1, 2015 through December 31, 2017, unless earlier terminated for cause, or pursuant to Section 13 of this agreement.

2. SCOPE OF WORK – Visit Duluth shall furnish to the City, on a non-exclusive basis, its special skilled services in connection with developing and carrying out the City's advertising and promotion program promoting the City of Duluth as a visitor, tourist and convention destination (see "Services"). A detailed description of the Services is attached as Exhibit A (scope of services, its Annual Marketing Plan and Work Program Outline and budget, a copy of which is on file with the City Clerk as Public Document No. \_\_\_\_\_ (the "Proposal"). The Proposal will be updated and submitted to the City's Chief Administrative Officer for review and approval by November 30 of each year. Work performed pursuant to the Agreement shall be of high quality, consistent with industry standards, and performed to the reasonable satisfaction of the City. The Services include without limitation (i) the preparation and placing of advertising copy, promotional and publicity materials through various media formats including but not limited to print, television, radio, indoor/outdoor billboard, direct marketing, internet or other electronic and social media or other media in key geographical locations and market channels as agreed by the parties, and (ii) the operation of tourist information centers by Visit Duluth. It is understood by and between the parties that Visit Duluth has expertise and knowledge in promotional marketing and shall, after considering the views of the City, have discretion in varying the expenditure of the funds provided as it determines in its judgment will best promote the City. Notwithstanding anything contained herein, Visit Duluth acknowledges that nothing in the Agreement shall be construed to preclude the City from directly or indirectly promoting or marketing City of Duluth as a visitor, tourist and convention destination beyond and separate from this Agreement.

3. PURCHASING PROCEDURES - Visit Duluth agrees that for all marketing and public

relations services contracted by Visit Duluth in connection with its obligations hereunder that it is required to issue requests for qualifications and/or requests for proposals (the "Request"), and to then select from those who respond, based on reasonable criteria for similar professional services and to obtain the best value available for the City. Visit Duluth agrees to maintain and make available for inspection all Requests and corresponding response documentation as required herein.

4. ANNUAL ALLOCATION

A. For Services satisfactorily performed pursuant to this Agreement unless otherwise agreed to by the parties, the City shall allocate to Visit Duluth in each calendar year One Million Seven Hundred Thousand Dollars and no/100<sup>th</sup> (\$1,700,000.00) from funds appropriated by the City Council from the tourism tax fund (the "Annual Allocation"); payable in twelve equal monthly installments from funds available in Fund0258, Agency 030, Object 5436-02. It is understood that the Annual Allocation is to be used for expenditures incurred in the current year only without prior written approval from the City's Chief Financial Officer. It is understood and agreed between the parties that in the event Visit Duluth does not utilize or commit a portion of the Annual Allocation in any year during the Term of the Agreement, that such unused or uncommitted amount will not be carried-over to the next year and will be returned to the City.

B. It is understood and agreed that the City shall be obligated to make the Annual Allocation only to the extent that sufficient tax revenue are derived from the sources mentioned in the first "Whereas" clause hereof, which are duly appropriated by the City Council. The City will review the tax revenue collected on a monthly basis. In the event the City determines that the tourism tax revenues collected by the City during any year of this Agreement will fall short of the Annual Allocation amount, the City reserves the right to adjust the Annual Allocation. The City will notify Visit Duluth in writing of such adjustment.

C. ADDITIONAL ALLOCATIONS - Notwithstanding the Annual Allocation provided for in Section 4A of this Agreement, the City shall make additional annual allocations to Visit Duluth as follows:

- (i) Fifty thousand dollars (\$50,000) in 2015, Seventy five thousand dollars (\$75,000) in 2016 and One hundred thousand dollars (\$100,000) in 2017 for promotional and marketing efforts in support of tourist and visitor activities, attractions and facilities in the St Louis River corridor, described as encompassing that part of the city west of 34<sup>th</sup> Avenue West.
- (ii) By October 15 of each year, the City will forecast the tourism tax collections revenue and appropriated expenditures projected for the balance of the current year. Should total projected tourism tax revenue net of tourism tax appropriations exceed budgeted net amounts for the current year, the City and Visit Duluth may discuss authorizing additional allocations

beyond the Annual Allocation for specified projects proposed by Visit Duluth and approved by the City for implementation in the next calendar year cycle. Such additional allocations will be used for specific, clearly defined one-time projects, and such allocations shall not increase the Annual Allocation provided in this agreement or constitute additional allocations pursuant to Section 4C in any subsequent year unless specifically provided for in the agreement between the parties.

5. City retains all its powers to determine how public monies shall be used, and it may require reasonable changes in the scope of work, budget, marketing plan, and work program outline, based upon its objectives, needs, or circumstances. Visit Duluth acknowledges and agrees that it may provide to the City, for its review and approval, a description of the proposed project, including anticipated benefits and outcomes, along with the cost of such project. The City will in its sole discretion determine if it will allocate additional funds for the project.

6. REPORTS

- A. On or before the 30<sup>th</sup> of each month, Visit Duluth shall provide a copy of its detailed internal balance sheet and income statement for the preceding month to the City's Auditor in a format acceptable to the City Auditor.
- B. On or before March 1 of each year, Visit Duluth shall provide a written report to the City's Chief Administrative Officer detailing its activities relating to the performance of the Services during the previous year. The report will be on a form mutually agreed between the parties and acceptable to the City. The report will include, without limitation, details showing how the money furnished by the City was spent and demonstrated what benefit resulted to the City from the expenditure.
- C. On or before April 30 of each year, Visit Duluth shall submit to the City's Chief Financial Officer a financial audit in the standard form acceptable to the Chief Financial Officer of the City, prepared by an independent qualified auditor, covering the preceding year.
- D. On the earlier of ten (10) days after filing or May 15, provide to the City's Chief Financial Officer a copy of the timely filed Federal Form 990 for Visit Duluth for the preceding fiscal year.

7. Any and all employees of Visit Duluth, or other persons, while engaged in the performance of any services required, of, or performed by Visit Duluth, its agents or subcontractors under this Agreement, 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 said employees or other persons while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of Visit Duluth, or its agents or employees or said other persons while so engaged in any of the services provided to be rendered herein, or in any way arising out of their performance of this Agreement shall not be the obligation of the City. In connection therewith, Visit Duluth hereby agrees to indemnify, save and hold harmless, and defend the City and any of its agents, and employees, thereof from any and all claims, demands, actions or causes of action of

whatsoever nature or character brought against the City, its agents or employees that arise out of or by reason of the execution of this Agreement or the performance of the services provided for herein.

8. Insurance

A. Visit Duluth represents that it will obtain and maintain through-out the term of this Agreement adequate insurance to fully protect the City from any and all claims, which may arise in connection with (i) Visit Duluth's breach of any material term of this Agreement or any statutory, regulator or common law obligation, and (ii) any public relations, promotional or other material furnished by or on behalf of Visit Duluth. Visit Duluth shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota.

- i. Workers' compensation insurance in accordance with the laws of the State of Minnesota.
- ii. Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- iii. **City of Duluth shall be named as Additional Insured** under the Public Liability and Automobile Liability, or as an alternate, Visit Duluth may provide Owners-Contractors Protective policy, naming itself and City of Duluth. Visit Duluth shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Visit Duluth to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Visit Duluth's interests and liabilities.
- iv. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverage evidenced by said certificate and shall further provide that failure to give such notice to the City will render any such change or changes in said policy or coverage ineffective as against the City.
- v. The use of an AAccord@ form as a certificate of insurance shall be accompanied by two forms B 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.

B. The insurance required herein shall be maintained in full force and effect during the life of the Agreement and shall protect Visit Duluth, 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 Visit Duluth, its employees, agents and representative in negligent performance of work covered by this Agreement.

C. Certificates showing that Visit Duluth is carrying the above described insurance

in the specified amounts shall be furnished to the City prior to the execution of the Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of the Agreement.

D. The City shall be named as an additional insured on each liability policy other than the professional liability and the workers' compensation policies of the Visit Duluth.

E. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least 30 days advanced notice being given to the City.

9. Visit Duluth hereby grants to the City a non-exclusive, non-assignable, non-sub-licensable royalty-free, worldwide license to all service marks, logos, trade names, copyrighted content, graphic files and images (collectively the "Work Products") created by or on behalf of Visit Duluth under the terms of this Agreement. Visit Duluth agrees that the foregoing includes the City's right to provide any and all Work Products to another agency to create materials for the City's use.

10. Any and all uses of City's name and logo shall be subject to City's prior written approval and shall comply with all guidelines as outlined by City and as may be amended from time to time. The parties hereto agree that the use of City's name and/or logo shall not grant any rights to Visit Duluth and/or any third party any right, title or interest to City's name and logo and that all such uses shall inure to the benefit of City.

11. In accordance with the provisions of Minnesota law, Visit Duluth agrees to maintain books, records, documents and accounts relevant to the Agreement and the use of its financial assistance for a period of six years from the termination of the Agreement. Visit Duluth will permit a State, entity, or private practice auditor to examine all such books, records and documents with reasonable notice and within a reasonable time at the expense of the City.

12. Visit Duluth will not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever.

13. City may cancel this Agreement by giving 120 days written notice to Visit Duluth. The executive branch of the City government will give Visit Duluth 90 days notice of its intent to renew this Agreement.

14. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Any waiver by either party of any provision of the Agreement shall not imply a subsequent waiver of that or any other provision.

16. It is understood and agreed that the entire agreement of 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.

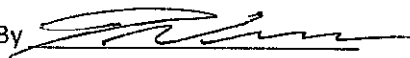
17. Visit Duluth's agent for administration of this agreement is the President of Visit Duluth. The City's agent for administration of this agreement is the Chief Administrative Officer or his/her designee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Dated:

CITY OF DULUTH

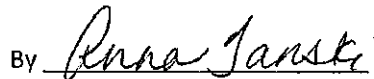
By



Mayor

VISIT DULUTH

By



Attest



City Clerk

Date:

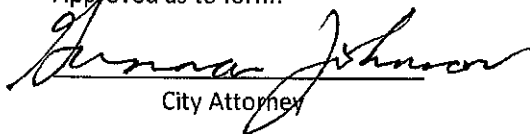
11/25/14

Countersigned:



City Auditor

Approved as to form:



City Attorney

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 14-0592

ADOPTED: NOVEMBER 24, 2014

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with Visit Duluth, substantially in the form on file in the office of the city clerk as Public Document No. 14-1124-06, for advertising and promotion services to the city during the years 2015-2017 at a cost to the city not to exceed \$1,750,000 in 2015, \$1,775,000 in 2016 and \$1,800,000 in 2017, payable from Fund 258, Agency 030, Object 5436-02 (tourism taxes, finance, tourism tax allocation Visit Duluth).

Resolution 14-0592 was unanimously adopted.

Approved November 24, 2014

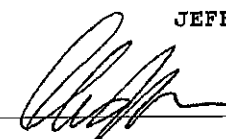
DON NESS, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 24th day of November, 2014, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this first day of December, 2014.

JEFFREY J. COX  
City Clerk

by

  
Assistant  
CITY OF DULUTH, MINNESOTA

22351