

**AGREEMENT FOR PROFESSIONAL SERVICES BY AND
BETWEEN
MADDEN MEDIA
AND
CITY OF DULUTH**

THIS AGREEMENT, deemed effective January 1, 2025 (the “Effective Date”), by and between the City of Duluth, hereinafter referred to as City, a Minnesota municipal corporation, and Madden Preprint Media, LLC, dba Madden Media, located at 53 N. 6th Avenue, Ste 105-157, Tucson, AZ 85701, hereinafter referred to as Consultant for the purpose of rendering services to the City.

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 proceeds of such taxes collected are to be spent by the City to advertise and promote the City of Duluth as a visitor, tourist and convention destination; and

WHEREAS, the City organized a working group to determine City needs and develop a Request for Proposals; and

WHEREAS, the City has requested professional promotional services pursuant to Request for Proposal No. 24-AA07 (Rebid) (the “RFP”) to promote the City of Duluth as a visitor, tourist and convention destination (the “Project”); and

WHEREAS, Consultant submitted a proposal in response to the RFP to provide services for the Project (collectively the “Proposal”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, Consultant has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, the City selected Consultant for Project pursuant to City Council Resolution No. 24-0925R approved on November 25, 2024; and

WHEREAS, the City desires to utilize Consultant’s professional services for the Project;
WHEREAS, the City intends for the Consultant to work in consultation with a destination marketing organization;

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

I. Services

Consultant will provide services related to the Project as described in Consultant’s Proposal (the “Services”). Consultant agrees that it will provide its services at the direction of the City of Duluth City Administrator (“City Administrator”) or his designee, which may include other consultants of the City and a destination marketing organization. The Services will include without limitation the following:

- A. **Comprehensive Marketing Planning** Develop comprehensive annual marketing, advertising, and communication plans complete with recommended key performance indicators and other metrics that track the engagement of target audiences and

accurately measure the return on the City's financial investment in all marketing-related activities. This work should prioritize shoulder season efforts and include both leisure and business travel, as well as events and conventions. The work product should also reflect the diversity of the destination and its visitors – including but not limited to diversity of identity, diversity of location, and diversity of amenities.

- B. **Target Audience Mapping** Develop expanded target audience profiles including demographics, psychographics, personas, and media habits. Recommend new target audiences for consideration.
- C. **Creative Campaign Development** Develop modern and alluring creative campaign assets to increase target audience engagement across traditional, digital, and social media channels that builds on existing creative work currently in the market. Periodically, integrate materials aimed at talent attraction and resident relocation in consultation with Workforce Development and Economic Development staff.
- D. **Website Management** Responsible for content planning and development, structural updates (as recommended to support strategies), of the existing City-owned tourism website. Build on strategic search engine optimization (SEO) throughout the website content to strengthen Duluth's online presence. Report on site traffic, conversion, performance, etc. Update and maintain the website, adhering to the Web content Accessibility Guidelines (WCAG)2.1, Level AA for websites and mobile apps. Remain fluent in security best practices to adhere to industry standards.
- E. **Video and Photography** Create visually compelling video and photo assets featuring Duluth's diversity in population, neighborhoods, and attractions. Assets created will be used on the City's tourism website and across all tourism marketing campaign channels and platforms.
- F. **Paid & Print Media** Develop plans and channel strategies with paid media platforms to stay relevant and competitive while continuously capturing the attention of new travelers. Print media plans and strategies should include but not be limited to, a destination visitor guide to be designed by the agency, with selling and invoicing advertising to be performed by Visit Duluth.
- G. **Earned Media** Develop, manage, and update a comprehensive list of targeted media outlets. Connect frequently with media targets to pitch captivating stories to secure earned media opportunities.
- H. **Social Media** Develop a comprehensive social media calendar and plan for organic and paid social media posts. Responsible for social media content development, posting, community management, campaign metrics, and reporting.
- I. **Data, Analytics, and Reporting** Capture data from multiple sources, including advertising platforms, public relations efforts, social media, events, and other resources. Identify key data points, monitor success in real-time, and prepare and

present performance reports monthly or as requested. Reporting will consist of monthly check-ins and quarterly reports, presented over Microsoft Teams. Recommend measurements to prove tourism has increased year over year.

- J. **Account Management** Lead implementation of marketing services and management of strategic partners and freelance contractors (including prioritizing the use of Duluth-based talent, services and products).
- K. **Local Perspectives** Required to work directly with local talent, creators, writers, artists and personalities.

In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

II. **Term**

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 2026, unless terminated earlier as provided for herein. The City shall review the contract and deliverables annually prior to renewal.

III. **Fees**

- A. It is agreed between the parties that Consultant's maximum fee for the Project and Services shall not exceed the sum of One Million, Eight Hundred Thousand and 00/100 Dollars (\$1,800,000.00) per calendar year, inclusive of all travel and other expenses associated with the Project, payable from and contingent upon funds appropriated by the City Council from the tourism tax fund (the "Annual Allocation"); payable in line with agreed-upon fee estimates and approved out-of-pocket costs incurred each month from funds available in Fund 258-030-5436-02. If Consultant does not spend and/or commit a portion of the Annual Allocation in any year during the Term of this Agreement, said unspent and/or uncommitted amount will not be carried over to the next calendar year and will be returned to the City. All invoices for services rendered shall be submitted monthly to the attention of the City's Finance Director (the "Finance Director") or designee. Payment of expenses is subject to the City's receipt of reasonable substantiation supporting such expenses.
- 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 is derived from imposition of taxes on certain hotel/motel accommodations and certain food and beverage transactions, which are duly appropriated by the City Council. The City will review the tax revenue collected on a monthly basis and share progress with Consultant. 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.

IV. **Intellectual Property**

- A. 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 Consultant 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.

- B. Consultant 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 Consultant under the terms of this Agreement and terms agreed upon by the Consultant and City. Consultant 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.
- C. Consultant agrees that all work created by Consultant for the City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work ("City Property"). Consultant further agrees that to the extent the work is not a "work made for hire" Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work under the terms of this Agreement and terms agreed upon by the Consultant and City. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

V. Financial Reports, Data, Records and Inspection

- A. Consultant agrees to annual presentation to the City Council on the scope of work. City will provide Consultant with 30 days' advance notice to prepare for the presentation.
- B. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or assist Consultant wherever possible to obtain such records, data and information.
- C. Records shall be maintained by Consultant 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 under this Agreement.
- D. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- E. Consultant 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. Consultant 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.

VI. City Representation and Warranties

City hereby represents and warrants that it has the right to enter into this Agreement and to perform all obligations hereunder. City represents and warrants that City's use of Consultant's Services will not infringe on any Intellectual Property right of any third party. City represents and warrants that its execution and performance of this Agreement will not breach any agreement or any contractual right of a third party.

City represents and warrants that it will disclose all information related to the Services to the Consultant. City further represents and warrants that all information relayed to the Consultant shall be true and correct as of the date given. Any inaccuracies or changes in such information shall be immediately forwarded to the Consultant. City makes such representations with the intention that the Consultant rely upon the same in performing the Services hereunder. City will indemnify, defend and hold Bellmont Partners, harmless from any breach of any of the warranties contained in this Section and from any claim for damages by any third party to the extent such claim is based in whole or in part upon an allegation of fact which would constitute a breach of any of the warranties of this Section.

VII. Consultant Representation and Warranties

Consultant represents and warrants that:

- A. Consultant and all personnel to be provided by it hereunder have sufficient licensure, training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- B. Consultant 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 provisions of services of this type.
- C. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota, St. Louis County, and City and agencies and political subdivisions thereof.
- 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 Consultant 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 the Consultant contrary to the terms of any instrument or agreement.
- E. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant 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 the Consultant to perform its obligations hereunder.
- F. The Consultant will not 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.

VIII. Early Termination

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 2026, unless terminated earlier as provided for herein. Either party may, by giving at least 90 days' written notice to the other, 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 Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services performed and out-of-pocket expenses incurred by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, 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 of Consultant which gave rise to such breach.

IX. 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 Consultant 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. Consultant 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 Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of intentional or negligent acts or omissions of Consultant 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. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

X. Indemnity

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold City and its employees, officers and agents harmless from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney's fees and expenses, whether asserted by itself or any third party, including claims arising from the acts, omissions,

negligence, or misconduct of Service Provider or that of its agents, employees, or contractors. The obligations shall include, but not be limited to, the obligations to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City are alleged to be or could be found to arise out of acts or omissions of Service Provider or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of Consultant arise out of or relate to the services in this Agreement or Service Provider's negligent, intentional, or wrongful acts or omissions, including breach of any duty in this agreement, of Consultant. The obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. This Section shall survive the termination of this Agreement for any reason. Consultant shall not have the obligation to indemnify the City for its intentional, willful or wanton acts. **The Consultant understands this provision may affect its rights and may shift liability.**

XI. Insurance

Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- A. Workers' compensation insurance in accordance with the laws of the State of Minnesota
- B. Commercial General Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, shall be in a company approved by the City of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provisions may make up the difference between the commercial general and auto liability coverage amounts and the required minimum amount stated above.
- C. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, Consultant hereby commits to provide at least 60 days' notice prior to any change to the Professional Liability Insurance policy or coverage; and in the event of any change, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this 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.
- D. **City of Duluth shall be named as Additional Insured** on each liability policy other than professional liability and workers' compensation policies of the Consultant. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Consultant to provide Certificate of Insurance evidencing such coverage with notice to City of cancellation in accordance with the provisions of the underlying insurance policy included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the

Consultant's interests and liabilities.

- E. Certificates showing Consultant is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- F. The certificates shall provide that the policies shall not be cancelled during the lift of this Agreement without advanced notice being given to the City at least equal to that provided for in the underlying policy of insurance.
- G. Except as provided for above, Consultant hereby commits to provide notice to City at least 30 days in advance of any change in the insurance provided pursuant to this Section XI or in advance of that provided for in the underlying insurance policy or policies whichever is longer. For the purposes of Section XI of this Agreement, the term, "changed", shall include cancellation of a policy of insurance provided hereunder and any modification of such policy which reduces the amount of any coverage provided thereunder below the amounts required to be provided hereunder or otherwise reduces the protections provided under such policy to City.
- H. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

XII. 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
City Hall, Room #422
411 West First Street
Duluth, MN 55802
Attn: David Montgomery
dmontgomery@duluthmn.gov

Consultant: Madden Media
53 N. 6th Ave., Ste. 105-157
Tucson, AZ 85701
Attn: Sarah Hupp Foster
shupp@maddenmedia.com

XIII. Civil Rights Assurances

Consultant, 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.

XIV. Laws, Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, St. Louis County, and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

XV. 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.

XVI. 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.

XVII. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, 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

XVIII. 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.

XIX. 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.

[Remainder of this page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

CITY OF DULUTH

By: _____
Mayor

Attest:

By: _____
City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to Form:

City Attorney

MADDEN MEDIA

By: _____

Its: _____
Title of Representative

Date: _____