

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
DULUTH TRANSIT AUTHORITY
AND THE CITY OF DULUTH**

THIS AGREEMENT is by and between the Duluth Transit Authority, hereinafter referred to as the "DTA", and the City of Duluth, hereinafter referred to as "City" for the purpose of rendering services to the DTA.

WHEREAS, Minnesota Statutes Section 458A.26, Subdivision (d) provides that Duluth City Attorney shall be the attorney for the DTA; and the DTA shall reimburse the City for all charges and costs incurred by the City therefor; and

WHEREAS, the DTA desires to utilize City's legal staff to provide professional legal services to the DTA; and

WHEREAS, the City has represented itself as qualified and willing to perform the professional legal services required by the DTA.

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

I. Services

City agrees to provide professional legal guidance, representation and advice to the DTA. City shall have the right to decline work from the DTA in the event of a conflict of interest or other applicable concern. The DTA shall also have the right to decline engaging the City. In either of these events, the DTA agrees to seek outside legal counsel at its own expense.

II. Fees

The DTA shall pay \$176.36 per hour to City pursuant to this Agreement. Said \$176.36 is the 2022 hourly rate set by the Duluth City Council pursuant to Council Resolution and City Code Section 31-8. The DTA and City agree that said hourly rate shall increase or decrease periodically by the Duluth City Council via resolution setting "Fee Schedule with License, Permit, Fee and Penalty Charges". All invoices for payment shall be submitted monthly to the DTA and directed to the attention of the General Manager. Invoices for services rendered shall be due and payable within 30 days of issuance by the City, payable into Fund number 110- 110-1104-4319 (General, Legislative and Executive, Attorney and Human Rights, Attorney Services).

III. General Terms and Conditions

1. Amendments

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

2. Assignment
City represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the DTA General Manager.
3. Agreement Period
Notwithstanding the date of execution, this Agreement shall commence on May 26, 2022 and shall continue indefinitely unless terminated earlier as provided for herein. Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause.
4. Data and Confidentiality, Records and Inspection
 - a. The DTA agrees that it will make available all pertinent information, data and records under its control for City to use in the performance of this Agreement, or to assist City wherever possible to obtain such records, data and information.
 - b. All reports, data, information, documentation and material given to or prepared by City pursuant to this Agreement will be confidential and protected under the attorney-client, work product and other applicable privileges except to the extent the data are otherwise classified under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 ("MGDPA").
5. 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. The parties do not intend to create any third party beneficiary of this Agreement. Neither party nor its employees shall be considered employees of the other and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota shall in no way be the responsibility of the other party. Both parties agree that they will be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof.
 - 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.
6. 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 delivery service or by the United States Postal Service, to the following addresses:

DTA:

General Manager
Duluth Transit Authority
2402 West Michigan Street
Duluth, MN 55806

CITY:

City Attorney
Duluth City Attorney's Office City
Hall Room 440
411 West First Street Duluth, MN
55802

7. Laws, Rules and Regulations

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

8. 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.

9. Force Majeure

City shall not 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 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.

10. Severability

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.

11. 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.

12. 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.

13. Waiver

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

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

DULUTH TRANSIT AUTHORITY

By: _____
General Manager

CITY OF DULUTH

By: _____

Mayor

Attest:

By: _____
City Clerk

Date: _____
Countersigned:

City Auditor
Approved as to form:

City Attorney

