

**PROFESSIONAL SERVICES AND INTELLECTUAL PROPERTY AGREEMENT
BETWEEN
VISIT DULUTH
AND
CITY OF DULUTH**

THIS AGREEMENT, deemed effective January 1, 2022 (the “Effective Date”), is by and between the City of Duluth (hereinafter referred to as “City”), a Minnesota municipal corporation, and Duluth Publicity Bureau, Inc. d/b/a Visit Duluth, a Minnesota corporation (hereinafter referred to as “Visit Duluth”) 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, Visit Duluth has contracted with the City to advertise and promote the City of Duluth as a visitor, tourist and convention destination since 1935;

WHEREAS, Visit Duluth has developed intellectual property on behalf of the City, such as the website (www.visitduluth.com), Facebook, Twitter, Instagram, and Pinterest accounts; and

WHEREAS, the City has requested professional promotional services pursuant to Request for Proposal No. 21-AA21 (the “RFP”) to promote the City of Duluth as a visitor, tourist and convention destination (the “Project”); and

WHEREAS, Visit Duluth submitted a proposal, addendums, and slideshow presentations 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, Visit Duluth has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, the City desires to utilize Visit Duluth’s professional services for a portion of the Project.

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

I. Intellectual Property

- A. The City is hereby purchasing the ownership of and all rights, title and interest to the “Intellectual Property” of Visit Duluth, such Intellectual Property defined as the internet presence of Visit Duluth, including, without limitation, the website (www.visitduluth.com), all Visit Duluth social media platforms and accounts including Facebook, Twitter, Instagram, and Pinterest and all derivative property, rights, and use thereof.
- B. In addition, during the term of this Agreement, the City shall have creative control of the Visit Duluth brand and logo. To this end, Visit Duluth hereby grants to the City an exclusive, royalty-free, worldwide license to use Visit Duluth’s service mark, “Visit Duluth,” USPTO Service Mark Registration Number 3452779, and logo, USPTO Service Mark Registration Number 3452778 (collectively, the “Marks”). In order to assure continued viability, integrity, and value of the Marks, the parties agree as follows:

1. Visit Duluth is the sole owner of the Marks and all associated goodwill, and retains all right, title and interest in and to the Marks.
2. The City will not adopt, use, or register any corporate name, trade name, trademark, service mark or other designation that violates Visit Duluth's rights in the Marks.
3. Visit Duluth shall maintain U.S. Patent and Trademark Office registration of the Marks as necessary.
4. Visit Duluth shall participate in any discussion regarding any proposed revision of a Mark or altered use of a Mark, but shall not unreasonably withhold approval of such revision or alteration.
5. Duluth Publicity Bureau, Inc. shall continue to do business as Visit Duluth.

II. Services

Visit Duluth will provide services related to the Project as described in Visit Duluth's Proposal (the "Services"). Visit Duluth agrees that it will provide its services at the direction of the City of Duluth Chief Administrative Officer ("Chief Administrative Officer"). The Services will include without limitation the following:

1. Perform convention sales;
2. Manage operations and perform functions of visitor center, with a goal of expanding connections with visitors;
3. Solicit and recruit convention and group sales to utilize event venues throughout Duluth;
4. Solicit and recruit sporting events and tournaments to utilize sporting venues throughout Duluth;
5. Under the umbrella of the marketing materials about Duluth developed by the City's marketing partner in accordance with Section 4.E. herein, increase the visibility of conventions, events and City event venues throughout Duluth;
6. Coordinate with the City's marketing partner on event and convention publicity, industry and trade connections.

III. Term

The term of this Agreement shall commence on January 1, 2022 and performance shall be completed by December 31, 2024, unless terminated earlier as provided for herein.

IV. Fees

- A. Intellectual Property. City shall pay Visit Duluth a one-time payment of three-hundred thousand dollars (\$300,000) within thirty (30) days of receiving an invoice and documentation from Visit Duluth that it has transferred its Intellectual Property to City pursuant to Section I of this Agreement. City payment shall be made by funds available in Fund 0258, Agency 030, Object 5436-02.
- B. Project and Services. It is agreed between the parties that Visit Duluth's maximum fee for performing the Project and Services shall not exceed the sum of six-hundred fifty thousand dollars (\$650,000) per calendar year, inclusive of all travel and other expenses associated with the Project, payable 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 Fund 0258,

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 Finance Director. 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 during the term of the Agreement, that such unused or uncommitted amount will not be carried over to another year and will be returned to the City.

- C. In the event of rebranding or logo revision, the City shall reimburse Visit Duluth, within 30 days, for any related expenses, including but not limited to rebranded tradeshow displays and marketing materials. Such reimbursement shall not constitute a fee for purposes of the maximum allowable fee identified in Section IV.C.
- D. 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 Visit Duluth. 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, provided that the monthly installments referenced in Section IV.B. herein shall not be less than \$47,000 in any month during the term. The City will notify Visit Duluth in writing of such adjustment.
- E. 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, sales strategy, 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.
- F. The City shall contract with its marketing partner to provide marketing design services in support of the Project and Services, which marketing design services shall be valued at no less than _____ dollars (\$35,000).

V. Financial Reports, Data, Records and Inspection

- A. On or before the 30th 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 Finance Director in a format acceptable to the Finance Director.
- B. On or before April 30, Visit Duluth shall submit to the City's Finance Director a financial audit in the standard form acceptable to the Finance Director, prepared by an independent qualified auditor, covering the preceding year.
- C. On the earlier of ten (10) days after filing or May 15, provide to the City's Finance Director a copy of the timely filed Federal Form 990 for Visit Duluth for the preceding fiscal year.
- D. The City agrees that it will make available all pertinent information, data and records under its control for Visit Duluth to use in the performance of this Agreement, or assist Visit Duluth wherever possible to obtain such records, data and information.
- E. Records shall be maintained by Visit Duluth 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.
- F. Visit Duluth 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. Visit Duluth 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. Visit Duluth 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 Visit Duluth'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.

VII. Visit Duluth Representation and Warranties

Visit Duluth represents and warrants that:

- A. Visit Duluth 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. Visit Duluth 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. Visit Duluth 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 Visit Duluth 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 Visit Duluth contrary to the terms of any instrument or agreement.
- E. There is no litigation pending or to the best of the Visit Duluth's knowledge threatened against the Visit Duluth 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 Visit Duluth to perform its obligations hereunder.
- F. Visit Duluth 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 January 1, 2022, and performance shall be completed by December 31, 2024, unless terminated earlier as provided for herein. Either party may, by giving at least 120 days' written notice to the other, terminate this Agreement in whole or in part. In the event of termination, all property and finished or unfinished documents and other writings prepared by Visit Duluth under this Agreement shall become the property of the City and Visit Duluth shall promptly deliver the same to the City. Visit Duluth 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 Visit Duluth, 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 Visit Duluth 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 Visit Duluth 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. Visit Duluth 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 Visit Duluth's employees while so engaged, and any and all claims whatsoever on behalf of Visit Duluth's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section IV of this Agreement, Visit Duluth'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 Visit Duluth from liability or judgments arising out of the acts or omissions of Visit Duluth 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.

X. Indemnity

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.

XI. Insurance

- A. Visit Duluth represents that it will obtain and maintain throughout 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, regulatory 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 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.
- 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 representatives 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 advance notice being given to the City.

XII. City Logo

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.

XIII. Records

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, City, 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.

XIV. Assignment

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

XV. General Provisions

- A. 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.
- B. Any waiver by either party of any provision of the Agreement shall not imply a subsequent waiver of that or any other provision.
- C. 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.
- D. Visit Duluth’s agent for administration of this agreement is the **INSERT TITLE HERE.** The City’s agent for administration of this agreement is the Chief Administrative Officer or their designee.

XVI. 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:	Noah Schuchman Chief Administrative Officer City Hall, Room 418 411 West First Street Duluth, MN 55802
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Visit Duluth:	Visit Duluth 225 West Superior Street, Suite 110 Duluth, MN 55802
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XVII. Civil Rights Assurances

Visit Duluth, 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.

XVIII. Laws, Rules and Regulations

Visit Duluth 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.

XIX. 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.

XX. 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.

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

CITY OF DULUTH

DULUTH PUBLICITY BUREAU, INC.
D/B/A VISIT DULUTH

By:

By:

Mayor

Its Authorized Company Representative

Attested: _____

Title of Representative

City Clerk

Date: _____

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A
Visit Duluth's Proposal Documents

The City of Duluth is seeking a partner who will provide convention, meeting and sports sales, as well as visitor center services. Visit Duluth is uniquely qualified to deliver these services, with our 85+ years of experience working on behalf of the City to promote tourism.

We love this place. From our inception, we have focused exclusively on promoting Duluth as a destination for all travelers and have fostered a welcoming environment focused on inclusion, diversity and equity. For 86 years, Visit Duluth has been a trusted steward of public investment in tourism marketing for the City of Duluth. We are committed to continuing our partnership, focusing on convention sales and visitor center functions, to carry out your vision for the city and to provide unwavering support within these functions for the area's vital tourism industry.

Convention Sales

Conventions, meetings and sporting events are critical market segments. We will actively sell our City to convention and meeting planners to help them connect with Duluth and drive growth for the tourism industry and for the city.

We will continue to use a customer relationship management (CRM) system. We currently subscribe to iDSS, a cloud-based CRM for the travel and tourism industry. Designed to support and measure all efforts related to event planning, this powerful tool allows us to be strategic in our initiatives and to continuously monitor and report on performance and economic impact to local businesses.

We will participate in national and state organizations that connect our team to meeting planners, event organizers, sports groups and industry professionals. Our outreach will create opportunities for networking and keep our sales team informed of industry trends and advances.

Our sales team will participate in key national and state events throughout the year. Trade shows, client events and personal meetings create opportunities for meeting planners and event organizers to connect with Duluth and to drive growth for the tourism industry and the city. We also invest in digital tools that connect our sales team to potential new clients.

We will utilize incentives when competing against other cities vying for conventions and tournaments. Meeting planners receive reduced venue fees subsidized through these incentives that we pay directly to the venue. Many national events and tournaments require a specific payment in the form of a "bid fee" that must be paid for that event to book the destination. Each potential recipient is vetted and must meet strict economic impact standards to qualify.

Our sales team will cultivate client relationships based on trust that to result in planners requesting a proposal. To streamline that process, and to connect with planners who are seeking event locations, we will use a variety of digital tools and services.

Visitor Center

Visitor center services are an expected offering for many people visiting a destination. Visit Duluth will continue offering a visitor information center to provide robust information about our destination to help them have an unforgettable visit.