

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

THIS AGREEMENT, deemed effective January 1, 2025, by and between the CITY OF DULUTH, a Minnesota municipal corporation, hereinafter referred to as the “City”, and DULUTH PUBLICITY BUREAU INC. d/b/a VISIT DULUTH, a Minnesota nonprofit 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, the City is also authorized to spend public funds in a manner that aligns with legislative intent in support of the City’s tourism economy; and

WHEREAS, tourists are visitors to the City expending dollars in the City for multiple purposes, including but not limited to recreational, vacation, cultural, sports, retail, medical or other purposes; and

WHEREAS, the City desires Visit Duluth to serve as the City’s official destination marketing organization (“DMO”); and

WHEREAS, the City finds that Visit Duluth’s is uniquely qualified to perform the services as the City’s DMO due to its history in providing services to the City; and

WHEREAS, it is the desire of the City to have Visit Duluth provide:

- marketing and promotional services promoting the City of Duluth as a visitor, tourist and convention destination including oversight of any tourism marketing services agreements entered into by the City or Visit Duluth; and
- meeting, conference and convention sales; and
- staff and support for the Duluth Visitor Center; and
- facilitate financial support, in the sole discretion of Visit Duluth, for tourism related purposes and activities provided by other organizations as determined to be in the best interest of promoting the City’s tourism objectives; and
- other strategic tourism related initiatives in the City’s best interests.

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

1. TERM.

The initial term of this Agreement shall be for a period of five (5) years starting January 1, 2025, through December 31, 2029, with an option to extend for an additional five-year period by mutual agreement, upon the written notice at least six months prior to the expiration of the initial term, unless earlier terminated for cause, or pursuant to Section 13 of this agreement.

2. SCOPE OF WORK.

A. Visit Duluth shall serve as the City’s DMO by furnishing to the City, on a non-exclusive basis, its special skilled services in connection with developing and carrying out the City’s marketing and

promotion program promoting the City of Duluth as a visitor, tourist and convention destination (“Services”). An annual marketing plan will be updated and submitted to the City of Duluth City Administrator (“City Administrator”) for review and approval by October 31 of each year. Visit Duluth agrees that it will provide its Services consistent with and subject to the terms and conditions of this Agreement with the consent of the City Administrator or the person designated by the City Administrator, which consent shall not be unreasonably withheld. Work performed pursuant to this Agreement shall be of high quality, consistent with industry standards, and performed to the reasonable satisfaction of the City. The Services will include without limitation the following:

- i. The oversight and management of the City’s tourism marketing contracts, specifically including that certain agreement with Madden Preprint Media, LLC bearing City Contract No. L31126 (a “tourism marketing agency”), or its successors; and
- ii. The preparation and placing of marketing, 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 geographical locations and market channels as determined appropriate in the best judgment of Visit Duluth and the tourism marketing agency; and
- iii. Solicit and recruit sporting events and tournaments to utilize sporting venues throughout Duluth; and
- iv. Solicit and recruit meeting, conference and convention sales for DECC, hotel and other site-based events throughout Duluth; and
- v. Beginning January 1, 2026, providing, at the sole discretion of Visit Duluth, financial support for tourism-related purposes and activities provided by other organizations as determined to be in the best interest of promoting the City’s tourism objectives; and
- vi. The operation of a tourist information center by Visit Duluth, with the goal of expanding connections with visitors and tourists; and
- vii. The development and implementation of other strategic tourism related initiatives as agreed upon between Visit Duluth and the City; and
- viii. By September 30, 2026, prepare a five (5) year strategic destination development plan which addresses all concepts of visitors including traditional tourism visitors as well as retail, sports and medical visitors across all geographic sections of Duluth. The strategic marketing plan will consider tourism marketing broadly and holistically, considering the best interests of the City including strategic interaction with economic development. If this Agreement is extended, Visit Duluth will prepare an additional five (5) year strategic destination development plan no later than 180 days after the start of the additional term. Visit Duluth will review said strategic plan with the City Administrator.

B. 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.

A. Visit Duluth agrees that for all marketing and public relations services greater than Twenty-Five Thousand and 00/100<sup>th</sup> dollars (\$25,000.00) contracted by Visit Duluth in connection with its obligations hereunder 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.

B. Visit Duluth agrees it will develop and implement formal written purchasing policies and procedures, approved by the Visit Duluth board of directors, establishing reasonable and appropriate purchasing approvals, limits and competitive bid requirements. Visit Duluth shall maintain a conflict-of-interest policy, requiring all employees, contractors and board members to disclose any potential conflicts arising from direct or indirect personal financial interests, family relationships, or business affiliations that could influence their professional judgment or decision-making. The purchasing policies are not required to align with those of the City of Duluth or other public bodies but to meet the requirements of this paragraph.

4. ANNUAL ALLOCATION.

A. For Services satisfactorily performed under this Agreement, the City shall allocate to Visit Duluth the amounts set forth as follows:

- i. Fiscal Year 2025. For fiscal year 2025, the City agrees to provide an amount not to exceed Six Hundred and Fifty Thousand and no/100ths Dollars (\$650,000.00) for the Services provided under this Agreement, from funds appropriated by City Council from the tourism tax fund (the "Annual Allocation"); payable in four equal quarterly installments from funds available in Fund 0258, Agency 030, Object 5436-02. During the term of this Agreement, the Annual Allocation shall increase by two percent (2.0%) annually.
- ii. Beginning Fiscal Year 2026. Beginning fiscal year 2026, the City agrees to provide to Visit Duluth for the Services provided under this Agreement, from funds appropriated by City Council from the tourism tax fund, payable in four equal quarterly installments from funds available in Fund 0258, Agency 030, Object 5436-02, the following amounts:
  - a. The Annual Allocation as provided in Section 4.A.i; and
  - b. An amount to be allocated by City Council not to exceed the amount in the tourism tax fund not otherwise committed ("Discretionary Allocation") calculated as the amount remaining in the tourism tax fund after deducting the following amounts:
    - i. All amounts set aside through specific authorizing legislation that tie bonding projects to tourism through previously stated and mandated commitments; and
    - ii. All amounts allocated for City funding to the General Fund and Parks Fund for the purpose of reimbursing City costs incurred in support of special events and tourist-focused activities; and
    - iii. All amounts related to contractual obligations for tourism marketing, if any, or allocations made to tourism-based organizations, including but not limited to, the Annual Allocation to Visit Duluth, Spirit Mountain, Great Lakes Aquarium, Northern Lights Express (NLX), the Duluth Zoo, Downtown Duluth Special Services, DECC Blue Bridge, and Bayfront management; and
    - iv. All amounts set aside for capital improvement and capital maintenance projects directly related to tourism-based activities; and
    - v. All amounts set aside for the City tourism tax contingency.

B. Visit Duluth understands and agrees that all allocations made under this Agreement are 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 its allocation in any year during the Term of this Agreement, that such unused or uncommitted amount will not be carried over to the next fiscal year and will be returned to the City.

C. It is understood and agreed that the City is only obligated to make allocations under this Agreement to the extent that sufficient tax revenue is derived from the sources identified herein and which are duly appropriated by the City Council. The City will review the tax revenue collected from time to time throughout the year. 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 or Discretionary Allocation amount, the City reserves the right to adjust any allocation to Visit Duluth. The City will notify Visit Duluth in writing of such adjustment.

D. 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.

E. Visit Duluth acknowledges and agrees that it may provide to the City, for its review and approval, a description of additional proposed projects not otherwise described in this Agreement, 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. Because the period of performance of the Services contemplated by this Agreement involve performance by Visit Duluth in subsequent fiscal year(s), funding of this Agreement is subject to the discretionary allocation of funds by City Council and designation of Visit Duluth as the recipient of such funds, Visit Duluth hereby acknowledges and understands that the City is under no obligation to fund the amounts listed herein. Visit Duluth understands that the allocations provided for herein are subject to Visit Duluth's timely submission of an annual plan and budget to the City for the applicable fiscal year, in such form and detail as the Finance Director may reasonably request. This Agreement shall not obligate City Council or the City in excess of the total amount designated or authorized by City appropriating ordinance.

## 5. REPORTS.

Visit Duluth shall submit reports in accordance with the following schedule:

A. On or before the 30<sup>th</sup> of the month following the completion of the previous quarter, Visit Duluth shall provide a copy of its detailed internal balance sheet and income statement for the preceding quarter to the City's Finance Director in a format acceptable to the Finance Director.

B. On or before May 15 of each year, Visit Duluth shall submit to the City's Finance Director a financial audit in the standard form acceptable to the Finance Director of the City, 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. By October 31, Visit Duluth will provide its marketing plan and budget for the upcoming year to the City's City Administrator for review and approval.

E. No later than March 15, Visit Duluth will present an operational review of its tourism marketing and development activities for the previous year to the Duluth City Council.

## 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 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 4 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 intentional or negligent 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.

C. Visit Duluth expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine

#### 7. INDEMNIFICATION.

To the fullest extent permitted by law, Visit Duluth 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 Visit Duluth 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 Visit Duluth or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of Visit Duluth arise out of or relate to the services in this Agreement or Visit Duluth's negligent, intentional, or wrongful acts or omissions, including breach of any duty in this agreement, of Visit Duluth. 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. Visit Duluth shall not have the obligation to indemnify the City for its intentional, willful or wanton acts. **Visit Duluth understands this provision may affect its rights and may shift liability.**

#### 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, (ii) any public relations, promotional or other material furnished by or on behalf of Visit Duluth; (iii) its oversight and management of tourism marketing contracts and financial support for tourism related purposes and activities. 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. Commercial general 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, contractual liability, and will obtain economic development or similar insurance, perhaps professional liability insurance, to protect the City in broader circumstances.

iii. **City of Duluth shall be named as Additional Insured** under the Commercial Liability and Automobile Liability. In addition, Visit Duluth will obtain economic development or similar insurance, perhaps professional liability insurance, which will protect the City in broader circumstances. 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 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. INTELLECTUAL PROPERTY.

A. Visit Duluth hereby grants to the City during the term of this Agreement 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.

B. The City hereby grants to Visit Duluth during the term of this Agreement a non-exclusive, non-assignable, non-sublicensable royalty-free worldwide license to the Intellectual Property of Visit Duluth that was sold to the City pursuant to that certain Professional Service Agreement and Intellectual Property Agreement bearing City Contract No. 24245\_. During the term of this Agreement, the City shall have creative control of the Visit Duluth brand and logo. During the term of this Agreement, 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 3452778 (collectively, the "Marks"). In order to ensure continued viability, integrity, and value of the Marks, the parties agree as follows:

i. 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.

ii. 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.

iii. Visit Duluth shall maintain, prosecute and defend any U.S. Patent and Trademark registrations of the Marks.

iv. Visit Duluth shall participate in any discussion with the City regarding any proposed revision of a Mark or altered use of a Mark but shall not unreasonably withhold approval of such revision or alteration.

v. Duluth Publicity Bureau, Inc. shall continue to do business as Visit Duluth.

vi. In the event of rebranding or logo revision, based on discussions between the City and Visit Duluth, the City shall reimburse Visit Duluth within 30 days, for reasonable identified expenses, including but not limited to rebranded tradeshow displays and marketing materials. Such reimbursement shall not constitute a fee for purposes of the maximum fee identified in Section 4 of this Agreement.

C. For good and valuable consideration of One Dollar (\$1.00), the City hereby grants to Visit Duluth the right, but not the obligation to acquire all right, title and interest in and to the Visit Duluth intellectual property (the "Intellectual Property"), purchased by the City pursuant to that certain Professional Service Agreement and Intellectual Property Agreement, bearing City Contract No. 24245, 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, goodwill, and use in and to the Intellectual Property (the "Option"). The term of the Option shall be for the Term of this Agreement. The parties agree that Visit Duluth may exercise this Option, such that Visit Duluth acquires all right, title, and interest in the Intellectual Property, by paying the fair market value of the Intellectual Property, as mutually agreed upon by the parties. If the parties cannot mutually agree on the fair market value, the parties agree to pursue a mediation process to determine that fair market value defined as the price that a willing buyer and willing seller would agree upon in an arm's length transaction, taking into account all relevant factors including the nature of the intellectual property, its market potential, legal protections, and current market conditions. In the event mediation does not produce an agreed value, then the parties agree to arbitrate such value in a proceeding held in the City of Duluth under the auspices of the American Arbitration Association.

#### 10. 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. Visit Duluth will seek such prior approval and comply with guidelines toward the goal of using the City of Duluth logo only where appropriate. Visit Duluth may continue to use the Visit Duluth logo without any further approval during the term of this Agreement.

#### 11. VISIT DULUTH REPRESENTATION AND WARRANTIES.

Visit Duluth represents and warrants that:

- A. Visit Duluth is a Minnesota nonprofit corporation under Minnesota Statutes Chapter 317A, is not in violation of its organizational documents, has the power to enter into this Agreement, and has duly authorized the execution, delivery, and performance of this Agreement by proper corporate action.
- B. 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.

- C. Visit Duluth and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner for and in the best interests of the City and in accordance with the then general accepted stands of the profession for the provisions of services of this type, including but not limited to a destination marketing organization.
- D. Visit Duluth has complied and will comply with all legal requirements applicable to it with respect to this Agreement.
- E. 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 or a default under, any agreement to which 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 Visit Duluth contrary to the terms of any instrument or agreement.
- F. There is no litigation pending or the best of Visit Duluth's knowledge threatened against 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 Visit Duluth to perform its obligations hereunder.
- G. 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.

11. 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. Visit Duluth shall be responsible for furnishing to the City records, data and information as the City may require pertaining to the matters covered by this Agreement. 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 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.

12. ASSIGNMENT.

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

13. TERMINATION.

A. Either the City or Visit Duluth may cancel this Agreement by giving 180 days written notice to the other for the convenience of the terminator.

B. Either party shall have the right to terminate this Agreement due to a material breach by the other party of any of its representations, warranties, covenants or obligations under this Agreement, which breach has not been cured within a reasonable time after receipt of notice specifying such breach. In the event of a termination pursuant to this Section 13 the non-breaching party shall have the additional right to pursue any other available legal remedies against the breaching party. Upon receipt of notice of intent to terminate, Visit Duluth shall make available to the City all data, marketing, advertising copy, promotional materials and such other information and materials, in whatever existing format, as may

have accumulated by Visit Duluth in performing this agreement, whether completed or in process. Visit Duluth shall be entitled to compensation for services satisfactorily performed and out-of-pocket expenses reasonably incurred by it to the date of the termination of this Agreement. In the event termination is due to breach by Visit Duluth, the City shall retain all other rights and remedies available to it, and the City shall be relieved from any payment of any fees in respect to the services of Visit Duluth which give rise to such breach.

14. 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 President of Visit Duluth. The City's agent for administration of this agreement is the City Administrator or their designee.

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

**CITY OF DULUTH**

**VISIT DULUTH**

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
President

Attest \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor

Approved as to form:

\_\_\_\_\_  
City Attorney