

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

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

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

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

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

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

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

1. TERM.

The term of this Agreement shall be for the period January 1, 2021, through December 31, 2021, unless earlier terminated for cause, or pursuant to Section 12 of this agreement.

2. SCOPE OF WORK.

A. Visit Duluth shall furnish to the City, on a non-exclusive basis, its special skilled services in connection with developing and carrying out the City's advertising and promotion program promoting the City of Duluth as a visitor, tourist and convention destination ("Services"). A detailed description of the Services (annual marketing plan, report and budget) is attached as Exhibit A. The annual marketing plan will be updated and submitted to the City's Chief Administrative Officer for review and approval by November 30 of each year. Work performed pursuant to 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 preparation and placing of advertising copy, promotional and publicity materials through various media formats including but not limited to print, television, radio, indoor/outdoor billboard, direct marketing, internet or other electronic and social media or other media in key geographical locations and market channels as agreed by the parties; and

ii. The operation of a tourist information center by Visit Duluth.

iii. A marketing plan which includes the following:

1. Promotional support for a proposed Community Day concept for the spring and fall shoulder seasons;

2. A visitor map program including provisions for making available and distributing paper and digital maps of the City and the City's tourist attractions, parks, trails and other points of interest; and

3. The marketing plan will include a separate and distinct promotional and marketing plan supporting tourist and visitor activities, attractions and facilities in the

St. Louis River corridor, also known as the part of the City west of 14th Avenue West approved by the city.

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.

Visit Duluth agrees that for all marketing and public relations services 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.

4. ANNUAL ALLOCATION.

A. For Services satisfactorily performed pursuant to this Agreement unless otherwise agreed to by the parties, the City shall allocate to Visit Duluth One Million, Five Hundred Thousand and no/100th Dollars (\$1,500,000) 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.

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 the sources mentioned in the first "Whereas" clause hereof, which are duly appropriated by the City Council. The City will review the tax revenue collected on a monthly basis. In the event the City determines that the tourism tax revenues collected by the City during the term of this Agreement will fall short of the Annual Allocation amount, the City reserves the right to adjust the Annual Allocation. The City will notify Visit Duluth in writing of such adjustment.

C. Visit Duluth agrees to allocate Seventy-Five Thousand dollars (\$75,000) of the Annual Allocation provided for in Section 4A for the detailed and specific promotional and marketing plan supporting tourist and visitor activities, attractions and facilities in the St Louis River corridor, also known as the part of the City west of 14th Avenue West, and referenced in Section 2A. iii. 3 of this Agreement.

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. 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.

5. REPORTS.

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.

6. INDEMNIFICATION AND WORKER'S COMPENSATION.

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.

7. INSURANCE.

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

i. Workers' compensation insurance in accordance with the laws of the State of Minnesota.

ii. Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit 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 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.

8. LICENSE.

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

9. 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.

10. 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.

11. ASSIGNMENT.

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

12. TERMINATION AND RENEWAL.

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

13. **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 Chief Administrative Officer or his/her designee.

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

CITY OF DULUTH

By _____
Mayor

VISIT DULUTH

By _____
President

Attest _____
City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney