

Exhibit A

SERVICE AGREEMENT

This Service Agreement (“Agreement”) is made effective as of the 1st day of January, 2025, by and between the City of Duluth, a Minnesota municipal corporation (“City”) and The Greater Downtown Council, a nonprofit Minnesota corporation, d/b/a Downtown Duluth (“Contractor”).

RECITALS

- A. Contractor is a nonprofit corporation and civic organization dedicated to the development and promotion of a strong, healthy, and exciting Downtown Waterfront.
- B. With leadership, guidance, and support from Contractor, a steering committee composed of a broad range of people representing property owners, business leaders, the City, and others with a direct stake in enhanced business and economic development conditions in the Downtown Waterfront have developed an Operating Plan for Duluth’s Downtown Waterfront District dated June 2024 (the “Operating Plan”).
- C. In 2004, Property owners in the Downtown Waterfront who wanted to improve the safety, cleanliness, and economic vitality of the Downtown Waterfront area petitioned the City to establish a Special Service District in accordance with Minn. Stat. §§ 428A.01 - 428A.101 (the “Act”).
- D. The City Council, by Ordinance Number 9688, adopted on September 13, 2004, established the Downtown Waterfront Special Service District in accordance with the Act and has also, by Resolution Number 04-0595R, adopted on September 13, 2004, assessed service charges (“Service Charges”) against certain property within the Special Service District on the basis of net tax capacity.
- E. Property owners in the Special Services District petitioned the City in 2009 to extend the term of the Special Service District to December 31, 2014; again in 2014 to extend the term of the Special Service District to December 31, 2019 and establish new Service Charges.
- F. In 2019, property owners petitioned the City to reestablish with expanded boundaries the Downtown Waterfront Special Service District (the “District”) from January 1, 2020 through December 31, 2024, and to establish new Service Charges.
- G. In 2024, property owners petitioned the City to extend the term of the District beginning January 1, 2025 and to establish new Service Charges.
- H. The City Council has, by Ordinance Number 24-042-O (the “2024 Ordinance”), renewed the District for a term beginning on January 1, 2025 and continuing through December 31, 2027, and also has, by Resolution Number 24-0742R (the “2024 Resolution”) assessed new Service Charges against certain properties within the District on the basis of net tax capacity.
- I. The Operating Plan, which is incorporated by reference into both the 2024 Ordinance and the 2024 Resolution, anticipates that the Special Services must be carried out through and the Service Charges must be provided to, an entity and that Contractor will be this entity.
- J. As used herein, the term “Special Services” means and includes any services contemplated within the scope of the Operating Plan, including, without limitation, clean and safe services, marketing/promotion/special events services, and physical enhancements.

- K. Before the execution of the petition presented requesting the establishment of the District and the imposition of Service Charges, City stated its intention to continue providing annual payments of \$236,000.00 to support the provision of Special Services in the District subject to annual review as part of the regular city budget process.

AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

1. **Services.** Contractor agrees to provide the Special Services described in the Operating Plan in a good and professional manner either itself or by and through contractors, sub-contractors, vendors or agents of Contractor's choice. Contractor shall perform the Special Services as an independent contractor and shall not be deemed, by virtue of this Agreement and the performance thereof, to have entered into any partnership, joint venture, or other relationship with City.

2. **Terms of Payment.** City will pay Contractor, annually, \$236,000.00 payable from Fund 258 (Tourism Taxes)-030 (Finance)-5436-10 (Tourism Tax Allocation Business Improvement District), plus the full amount of all Service Charges collected from the District in an amount not to exceed \$475,000 for the year 2025 with a 4% increase in the following two (2) years, payable from Fund 110 (General Fund) – 700 (Transfers and Other Functions) – 1411 (Business Improvement District) – 5441 (Other Services and Charges). Payment of the \$236,000.00 will be made in equal monthly installments due on the last day of each month, except that the installment for January 2025 will be made at the end of February 2025 together with the February payment. It is understood and agreed that, beginning in 2026, the City shall be obligated to provide payment to the Contractor only when sufficient tax revenue to pay such obligations is derived from the Lodging Tax and Food and Beverage Tax, which tax revenue is designated by the City Council to be placed in Fund 258 and related funds and accounts. In the event that insufficient tax revenue is derived from said taxes, the City shall have the right in its sole discretion to reduce the funding available to the Contractor under this Agreement. With regard to the Service Charges, the City will act as a conduit; all Service Charges will flow through to Contractor in exchange for Contractor's agreement to provide the Special Services. Payments of Service Charges will be made by City to Contractor within 30 days of the date on which they are received by City from St. Louis County. Contractor will endeavor to solicit contributions from exempt organizations, to obtain grants, and to generate program income to fund the remaining portions of the budget reflected in the Operating Plan.

3. **Additional Contractor Responsibilities.** In addition to providing the Special Services, Contractor must:

a. Provide an annual budget to City setting forth the amount, by general category, Contractor proposes to spend to provide each of the Special Services. The budget percentages set forth in the Operating Plan are considered guideposts for this purpose.

b. Contractor will, on an ongoing basis, continue to solicit the input of property owners paying Service Charges.

c. Contractor will provide quarterly status reports within 30 days after the last day of each calendar quarter describing the Special Services provided. Each report will be accompanied by an operating statement showing the manner in which Service Charges and other payments received from the City have been spent.

4. **Additional Agreement by City.** In addition to making the payments set forth in Section 2, City agrees to approve the annual budget submitted by Contractor, if it is consistent with the Operating Plan.

5. **Additional Services.** From time to time hereafter, the parties may agree to the performance by Contractor of additional services with respect to the District. Any such agreement shall be set forth in writing in an addendum to this Agreement and shall be executed by the respective parties prior to Contractor's performance of any services thereunder. Upon proper completion and execution of any such addendum, the addendum shall be incorporated into this Agreement and shall have the same force and effect as if the terms of such addendum were a part of this Agreement as originally executed. The performance of services pursuant to an addendum shall be subject to the terms and conditions of this Agreement except where the addendum provides to the contrary, in which case the terms and conditions of any such addendum shall control. In all other respects, any addendum shall supplement and be construed in accordance with the terms and conditions of this Agreement.

6. **Ownership and Use of Documents.** All materials created or otherwise prepared by Contractor as part of Contractor's performance of this Agreement shall be owned by Contractor.

7. **Term and Termination.**

a. Subject to paragraph 7.b of this Agreement, this Agreement shall remain in effect for the years 2025, 2026, and 2027.

b. This Agreement may be terminated for cause by either party upon ninety (90) days written notice. "Cause" includes, without limitation, any failure by Contractor to diligently perform the duties set forth in this Agreement in a timely manner or to otherwise comply with the provisions of this Agreement and any failure by City to provide the funding or approvals necessary for Contractor to fulfill Contractor's duties under this Agreement.

8. **Insurance.** During the term of this Agreement, Contractor shall provide Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be with a company approved by the City; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Automobile, Independent Contractors, and Contractual Liability.

City of Duluth shall be named as Additional Insured under the Public Liability, Excess Umbrella Liability (An Umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured) and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Contractor shall also provide evidence of Statutory Minnesota Worker's Compensation Insurance. Contractor to provide certificate of insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provocations included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer must notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverage's 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 coverages ineffective as against the City.

9. **Annual Appropriation.** Beginning in 2025, the annual payment of \$236,000.00 by City, is subject to annual appropriation. If City fails to appropriate the full amount of the annual payment, the Contractor may reduce the level of Special Services to be provided in a proportionate amount.

10. **Notices.** All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, and addressed, if to a party to this Agreement, to the address set forth next to such party's signature at the end of this Agreement, or if to a person not a party to this Agreement, to the address designated by a party to this Agreement in the foregoing manner. Any party may change his or its address by giving notice in writing, stating his or its new address, to any other party, all pursuant to the procedure set forth in this Section 10.

11. **Assignment.** Neither party to this Agreement shall assign any right or obligation hereunder in whole or part, without the prior written consent of the other party hereto. No assignment or transfer of any interest under this Agreement shall be deemed to release the assignor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation. These conditions and the entire Agreement are binding on the heirs, successors and assigns of the parties hereto. Notwithstanding anything in this Section to the contrary, Contractor may employ any one or more contractors, sub-contractors, vendors, agents or suppliers it chooses to carry out the Special Services.

12. **Amendment, Modification or Waiver.** No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or such party's or parties' duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not affect or impair any right arising from any subsequent default. Nothing herein shall limit the remedies or rights of the parties hereto under and pursuant to this Agreement.

13. **Severable Provisions.** Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

14. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

15. **Survival.** Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

16. **Captions, Headings and Titles.** All captions, headings and titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa, and masculine, feminine, and neuter expressions shall be interchangeable. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

17. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

18. **Parties in Interest.** This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the parties hereto and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the parties hereto, and it does not create a contractual relationship with or exist for the benefit of any third party.

19. **Applicable Law.** This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the Laws of the State of Minnesota.

20. **Independent Contractor.** It is agreed that nothing contained herein is intended or should be construed as creating the relationship of co-partner, joint venturers, or an association between Contractor and City. Contractor is an independent contractor and neither it, its employees, agents, subcontractors, nor representatives shall be considered employees, agents, or representatives of City. Except as otherwise provided herein, Contractor shall maintain in all respects its present control of the means and personnel by which this Agreement is performed. From any amounts due Contractor there shall be no deduction for federal income tax, FICA, state income tax, nor for any other tax unless otherwise required by law or by the terms of this Agreement. Payment of federal income tax, FICA, state income tax, unemployment compensation and other payroll deductions and taxes are the sole responsibility of Contractor.

21. **Records - Availability and Retention.** Complete and accurate records of the work performed pursuant to this Agreement shall be kept by Contractor for a minimum of six (6) years following termination of this Agreement. The retention period shall be automatically extended during the course of any administrative or judicial action involving City regarding matters to which the records are relevant. The retention period shall be extended automatically until the administrative or judicial action is completed or until the authorized agent of City notifies Contractor in writing that the records no longer need to be kept. In accordance with Minn. Stat. § 16B.06, subd. 4, the books, records, documents and accounting procedures and practices of Contractor relative to this Agreement shall be subject to examination by City and the state auditor.

22. **Indemnity.**

a. Contractor shall save and protect, hold harmless, indemnify and defend City, its commissioners, officers, agents, employees and volunteer workers against any and all liability, causes of action, claims, losses, damages and costs and expenses, including but not limited to attorneys' fees, investigation costs and litigation costs, arising from or allegedly arising from or resulting directly or indirectly from any acts and omissions and/or professional errors and omissions of Contractor, or Contractor's officers, employees, subcontractors and affiliates in the performance of this Agreement. On 10 days written notice from City, Contractor will appear and defend against all lawsuits against the City arising from or allegedly arising from or resulting directly or indirectly from any acts and omissions and/or professional errors and omissions of Contractor, or Contractor's officers, employees, subcontractors and affiliates in the performance of this Agreement.

b. Contractor shall be responsible for the professional quality, technical accuracy and the coordination of all services furnished under this Agreement. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in final reports, documents or services discovered after final review by City.

23. **Non-discrimination.** Contractor agrees as follows:

a. No person shall be illegally excluded from employment rights in, be denied the benefits of, or be otherwise subject to discrimination in the program that is the subject of this Agreement on the basis of race, creed, color, sex, marital status, sexual preference, public assistance status, age, disability or national origin.

24. **Force Majeure.** No party to this Agreement shall be responsible for any delays or failures to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargos, governmental restrictions, acts of governments or governmental authorities, and other cause beyond the control of such party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the day and year first set forth above.

City of Duluth

By: _____
Its Mayor

Attest: _____
By: Ian Johnson, its Clerk

As to form: _____
By: Jessica Fralich its City Attorney

Countersigned: _____
By: Josh Bailey, its Auditor

City of Duluth
411 West First Street
Duluth, MN 55802

Greater Downtown Council,
a Minnesota nonprofit corporation
d/b/a Downtown Duluth

By: _____
Kristi Stokes, its President

Downtown Duluth
118 East Superior Street
Duluth, MN 55802