AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN

CHRISTINE PENNEY
AND
CITY OF DULUTH

THIS AGREEMENT, effective as of DATE (the "Effective Date"), by and between the City of Duluth, hereinafter referred to as "City", and Christine Penney located at 9305 Congdon Boulevard, Duluth, MN, 55804, hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services to identify and solicit grant funds to support the St. Louis River Corridor projects (the "Project"); and

WHEREAS, Consultant has represented herself as qualified and willing to perform the services required by the City; and

WHEREAS, Consultant submitted a Proposal to provide services for the Project (the "Proposal"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the City desires to utilize Consultant's professional services for the Project;

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

I. Services

Consultant will provide services related to the Project as described in Consultant's Proposal dated December 18, 2017 (the "Services"). Consultant agrees that it will provide its services at the direction of the Director of Public Administration ("Director"). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

II. Fees.

Consultant will be paid $50 per hour for work satisfactorily performed between 9:00 am and 9:00 pm. Consultant will be paid $75 per hour for work satisfactorily and necessarily performed between 9:00 pm and 9:00 am. It is agreed between the parties that Consultant's maximum fee for the Project and Services shall not exceed the sum of Fifty Thousand Nine Hundred and no/100th Dollars ($50,900.00) inclusive of all approved travel and other expenses associated with the Project, payable from Parks Fund 205; Community Resources 130; Parks Operating 1219; Other Professional Services 5319; Resolution No. 18-0044R passed on January 8, 2017. All invoices for services rendered shall be submitted monthly to the attention of Director. Payment of expenses is subject to the City's receipt of reasonable substantiation/back-up supporting such expenses.

IV. General Terms and Conditions

1. Amendments

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

2. Assignment

Consultant represents that she will be the sole provider of the services set forth herein; and further agrees that she will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City.

3. Data and Confidentiality, Records and Inspection

a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant wherever possible to obtain such records, data and information.

b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.

c. Consultant agrees that all work created by Consultant for the City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work ("City Property"). Consultant further agrees that to the extent the work is not a "work made for hire", Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

d. Records shall be maintained by Consultant 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.

e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the

charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

f. Consultant 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. Consultant shall ensure that, with reasonable notice, 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 Consultant 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.

4. Consultant Representation and Warranties

Consultant represents and warrants that:

a. Consultant has sufficient training and experience to perform the duties set forth herein and is in good standing with all applicable licensing requirements.

b. Consultant shall perform her 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. Consultant has complied or will comply with all legal requirements applicable with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.

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 Consultant is a party or by which she 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 Consultant contrary to the terms of any instrument or agreement.

e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant 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 Consultant to perform the obligations hereunder.

f. The Consultant will not, without the prior written consent of the City, 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.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 2018, unless terminated earlier as provided for herein.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. Contractor will not be responsible for incomplete applications if City fails to provide requested material in a timely manner. In the event of termination due to breach by Consultant, 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 Consultant which gave rise to such breach.

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 Consultant 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. Consultant shall not be considered an employee of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota while so engaged shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant 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 Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant 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. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity.

To the extent allowed by law, Consultant shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Consultant's a) breach of this agreement or b) its negligence or misconduct in performing the Services hereunder or c) any claims arising in connection with Consultant's work on the Project, or d) the use of any materials supplied by the Consultant to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance.

Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

a. Public Liability and Automobile Liability Insurance with limits not less than **$1,000,000** Single Limit, shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. **City of Duluth shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability, or as an alternate, Consultant may provide Owners-

Contractors Protective policy, naming herself and City of Duluth. Upon execution of this Agreement, Consultant shall provide a Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.

b. Professional Liability Insurance in an amount not less than $1,000,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.

d. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

9. 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: City of Duluth
411 W First Street
City Hall Room 322
Duluth MN 55802
Attn: Director of Public Administration
Jim Filby Williams

Consultant: Christine Penney
9305 Congdon Blvd
Duluth MN 55804

10. Civil Rights Assurances

Consultant, 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.

11. Laws, Rules and Regulations.

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

12. 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.

13. Force Majeure.

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach

of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. 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 the day and date first above shown.

CITY OF DULUTH

By:

_____
Mayor

Attest:

_____
City Clerk

Date Attested: _____

Countersigned:

_____
City Auditor Date

Approved as to form:

_____
Assistant City Attorney Date

CHRISTINE PENNEY

By:

_____
Its: Sole Proprietor

Date:_____

STATEMENT OF WORK

SUBMITTED: December 18, 2017

I. INTRODUCTION AND GENERAL INFORMATION

This Statement of Work is entered into on [date] , between the City of Duluth, Minnesota (Client) and Christine A. Penney, (Contractor). This Statement of Work is an exhibit to the Contract Agreement ("Contract") by and between Client and Contractor that is incorporated herein by reference. If this statement of work if signed prior to the Agreement, both parties agreed that it is understood to be governed by the Agreement

TERMINOLOGY AND ACRONYMS

The following defined terms and/or acronyms shall apply to work performed by the Contractor under this Statement of Work.

"Contractor" represents the individual or entity engaged to deliver the services defined in this Scope of Work.

"Client" represents the organization that will engage with Contractor for the delivery of services defined herein.

"Project" represents the full scope of work that the Contractor will perform for Client under the terms of this Scope of Work.

"Contract" represents the legally binding terms of Client and Contractor relationship.

CLIENT INFORMATION

Client Company Name: City of Duluth, Minnesota Parks and Recreation Division

Client Manager Name: William Roche, Division Manager

Client Manager Phone: 218-730-4309

Client Manager Email: wroche@duluthmn.gov

II. PROJECT INFORMATION

PROJECT OVERVIEW

PROJECT PURPOSE

Client has a long-term, comprehensive, extremely robust vision for the St. Louis River Corridor to support outdoor recreation, reconnect western Duluth communities to the River through trails and safe access to trails and amenities, and fostering sustainable economic development. Duluth is a key player in the effort to turn the Corridor into an outdoor adventure destination as well as contribute significant actions to the remediation efforts that have turned the St. Louis River into a place to enjoy water and terrestrial nature-based activities.

PROJECT SUMMARY DESCRIPTION

The scope of work includes identifying and soliciting grant funds to support the Project Purpose. Scope includes researching new opportunities, preparing and submitting grant applications and all supporting documents, identifying and soliciting appropriate partners, preparing and updating a schedule of grant opportunities, and preparing and submitting grant reports.

PROJECT PAYMENT TYPE

Client shall pay to Contractor the fees and other compensation set forth in the attached Contract. Client will invoice Contractor for all fees, charges and reimbursable items payable to Contractor on a monthly basis as such payments are due.

PROJECT DURATION

The period of performance for the Project is hereby extended through 30 December 2018. All work must be scheduled to complete within this timeframe. Any modifications or extensions will be requested through Client and Contractor for review and discussion.

WORK LOCATION

The Contractor will perform the majority of work at her own facility. The Contractor will attend weekly staff meetings at the Client's facility. Contractor will attend all off-site meetings, conferences, gatherings, and City Council meetings deemed necessary to the success of the Project.

DESCRIPTION OF SERVICES

Contractor agrees to provide the following services (“Services”) to Client:

i. Create and maintain an accurate Schedule of grant applications. Update the format of said schedule as necessary to facilitate the Project.
ii. Prepare and submit all approved grant applications and supporting documents to include application documents, narratives, budgets, support letters. Client will supply supporting documents to include maps, technical drawings of projects, certifications and resolutions.
iii. Investigate and identify additional funding opportunities. Include new prospects on

application Schedule.

iv. Identify and network with partners as necessary to facilitate the Project.

v. Attend and participate in weekly Client meetings and others upon request necessary to facilitate the Project.

DELIVERABLES

1. Grant applications MAY include but are not limited to the following. Additional tasks may be designated in an addendum to this agreement.

Applications	**Est. Cost**
Federal Recreation Trail Program (1)	$1,500
DNR Outdoor Recreation Grant Program (1)	$1,500
DNR Local Trail Connections Grant Program (1)	$1,500
DNR Regional Trail Grant Program (1)	$1,500
Legacy Parks and Trails Designations and rewrites (3) Spirit Mountain, Lakewalk, WWFT	$9,000
Legacy funding applications Spirit Mt and Lakewalk	$5,000
CDBG (1)	$1,500
Clean Water Fund (1)	$1,500
Transportation Alternatives Program (LOI)	$500
Transportation Alternative Program - full proposal	$5,500
Coastal Program (1)	$1,500
LCCMR (1)	$4,000
Technical Support to City Partners and /or Legacy History & Interpretation	$5,000

2. Grant Reporting
Prepare all pre-award documents. Track reporting deadlines. Submit all grant reports and supporting materials. Train Project Technician assist with these tasks.
Estimated time: 10 hours/month/3 months - Jan - Mar (30 hours),
7 hours/month/3 months - Apr - June (21 hours)
4 hours/month/3 months - July -Sept (12 hours)
2 hours/month/3 months - Oct - Dec (6 hours)

3. Attend planning meetings and events as necessary.
Estimated time: 23 hours/month/3 months - Jan - Mar (69 hours),
15 hours/month/3 months - Apr - June (45 hours)
10 hours/month/3 months - July -Sept (30 hours)
5 hours/month/3 months - Oct - Dec (15 hours)

STATUS REPORTS

1. Contractor will provide on-going status reports of grant applications in process. If Contractor submits applications, Contractor will provide email or other confirmation of those applications.
2. Contractor will provide weekly updates of all work performed as requested at weekly meetings and/or via email.
3. Contractor will provide email confirmation of grant reports submitted.

III. PROJECT COST

Contractor and Client agree to the following costs and expenses associated with the successful delivery of the Project as defined in this Scope of Work.

FEES

Contractor's fees for the Project are based on hourly fee structure as defined in the attached Contract.

TIME AND MATERIALS (Hourly rate)

Role	Rate	Pay Type	Units	Cost Estimate
Grant writing	$50/hour	Hourly	790	$25,000
Legacy designations	$50/hour	Hourly	280	$14,000
LOIs	$50/hour	Hourly	10	$500
Grant reporting	$50/hour	Hourly	69	$3,450
Grant management meetings	$50/hour	Hourly	159	$7,950
			Estimated total	$50,900

EXPENSES/REIMBURSEMENT

Listed below are the expected business expenses to be incurred in the course of delivering the services outlined in this Scope of Work.

1100 Travel: From Contractor place of business to and from meetings representing the City of Duluth. Hourly rate only, no mileage.

IV. Scope of Work ACCEPTANCE AND AUTHORIZATION

The terms and conditions of the MSA apply in full to the services and products provided under this Statement of Work.

IN WITNESS WHEREOF, the parties hereto each acting with proper authority have executed this Statement of Work, under seal.

City of Duluth	Christine A. Penney
William Roche	Contractor
Parks Manager	Date:
Date:	Signature:
Signature:	