

FINANCE COMMITTEE

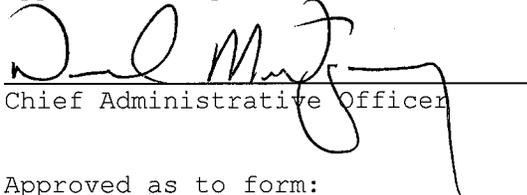
12-0001R

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH VISIT DULUTH TO PROVIDE ADVERTISING AND PROMOTION SERVICES TO THE CITY OF DULUTH FOR THE YEARS 2012-2014

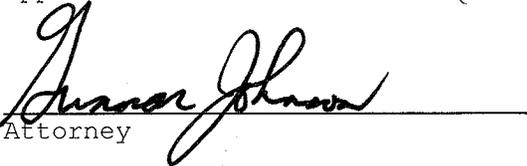
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with Visit Duluth, substantially in the form on file in the office of the city clerk as Public Document No. \_\_\_\_\_, for advertising and promotion services to the city during the years 2012-2014 at a cost to the city not to exceed \$1,600,000 annually, payable from Fund 258, Agency 030, Object 5436-02 (Tourism Taxes, Finance, Tourism Tax Allocation Visit Duluth).

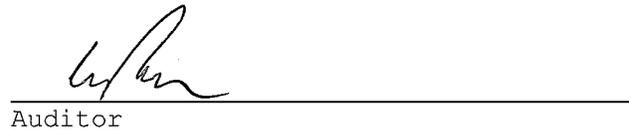
Approved for presentation to council:

  
Chief Administrative Officer

Approved as to form:

  
Attorney

Approved:

  
Auditor

ADM/FIN DM:slw 1/5/2012

STATEMENT OF PURPOSE: This resolution authorizes execution of an agreement with Visit Duluth for 2012, 2013 and 2014, for advertising and promotion services promoting the city as a visitor destination based on a budget and marketing plan developed annually by Visit Duluth. The term of the agreement is three years to allow Visit Duluth to formulate long term marketing plans. The funds to be allocated are fixed for the term of the agreement and the council will consider annually the allocation to be made from tourism tax fund. Expenditures will only occur if funding is appropriated each year by the council.

**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 provided that certain of the proceeds of such taxes collected are to be placed in Fund 0258 and is authorized to spend public funds for advertising and promoting the City of Duluth as a 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 and 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, 2012 through December 31, 2014, inclusive unless earlier terminated for cause, or upon 120 days notice to the other.
2. SCOPE OF SERVICE - 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 (the "Services"). A detailed description of the Services is attached as Exhibit A (scope of services, its Annual Marketing Plan and Work Program Outline and budget, a copy of which is on file with the City Clerk as Public Document No. \_\_\_\_\_ (the "Proposal"). The Proposal 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 include without limitation (i) the preparation and placing of advertising copy, promotional and publicity material through various media formats including but not limited to print, television, radio, indoor/outdoor billboard and social media in key geographical locations as agreed by the parties, and (ii) the operation of tourist information centers by Visit Duluth. 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 this 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. Visit Duluth agrees that for all marketing and public relations services contracted by Visit Duluth in connection with its obligations hereunder that 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 most favorable returns and rates available for the City. Visit Duluth agrees to maintain and make available for inspection all Requests and corresponding response documentation as required herein.

4. A. For Services satisfactorily performed, upon presentation of itemized and verified statements of account inclusive of a comprehensive list of the media and creative expenditures in a form approved and accepted by the City's Chief Financial Officer, the City shall reimburse Visit Duluth for the actual and direct expenses incurred by Visit Duluth in an amount not to exceed the Annual Allocation as hereinafter defined. Invoices for reimbursement will be submitted on a monthly basis and will be accompanied by such documentation as the City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly reimburse Visit Duluth up to the amount set forth below.

B. Unless otherwise agreed to by the parties, the maximum amount of expenses to be reimbursed by the City pursuant to the preceding Section 4.A. in any calendar year shall not exceed One Million Six Hundred Thousand Dollars and no/100<sup>th</sup> (\$1,600,000.00) from funds appropriated by the City Council from the tourism tax fund (the "Annual Allocation"); payable from funds available in Fund 0258, Agency 030, Object 5436-02. It is understood that the Annual Allocation is to be used for reimbursement of expenditures incurred in the current year only without prior written approval from the City's Chief Financial Officer. In addition, the current year's Annual Allocation cannot be used for future year's expenses. It is understood and agreed between the parties that in the event Visit Duluth does not utilize a portion of the Annual Allocation in any year during the Term of this Agreement, that such unused amount will not be carried-over to the next year.

C. It is understood and agreed that the City shall be obligated to reimburse Visit Duluth for such expenditures only to the extent that sufficient tax revenue are 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 any year 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.

5. 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 request authorization for projects outside the Scope of Services. In such case, Visit Duluth will 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.

6. On or before February 15, of each year, Visit Duluth shall report to the City a written report of its activities relating to the performance of the Services during the previous year. The report will be in a form mutually agreed between the parties and acceptable to the City. The report will include, without limitation, details showing how the money furnished by the City was spent and demonstrate what benefit resulted to the City from the expenditure. Within 90 days of December 31, of each year, Visit Duluth shall submit to the City a financial audit in standard form acceptable to the Chief Financial Officer of the City, prepared by an independent qualified auditor, covering the last year and, provide to the City a copy of the Federal Form 990.

7. Any and all employees of Visit Duluth, or other persons, while engaged in the performance of any service 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 or responsibility 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.

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, 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, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and 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 coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.
  - v. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.
- b. The insurance required herein shall be maintained in full force and effect during the life of this 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 the 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 this Agreement and a certificate showing continued

maintenance of such insurance shall be on file with the City during the term of this 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. 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.

10. 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.

11. In accordance with the provisions of Minnesota law, Visit Duluth agrees to maintain books, records, documents and accounts relevant to this Agreement and the use of its financial assistance for a period of six years from the termination of this 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.

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

13. 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.

14. 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. Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

16. 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.

17. 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.

Dated:

**CITY OF DULUTH**

**VISIT DULUTH**

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

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

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

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

Countersigned:

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

Approved as to form:

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