

RECREATION, LIBRARIES & AUTHORITIES COMMITTEE

12-0527R

RESOLUTION AUTHORIZING A MASTER SERVICES AGREEMENT WITH THE INTERNATIONAL MOUNTAIN BICYCLING ASSOCIATION FOR PROFESSIONAL CONSULTING SERVICES FOR TRAIL DESIGN, BUILDING, REPAIR AND MAINTENANCE IN AN AMOUNT NOT TO EXCEED \$50,000.

CITY PROPOSAL:

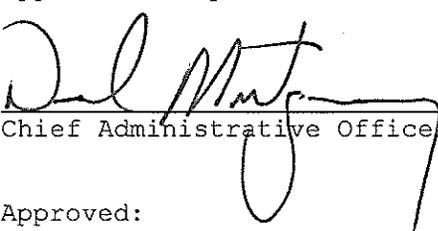
RESOLVED, that the proper city officials are hereby authorized to enter into a master services agreement with the International Mountain Bicycling Association, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, for professional consulting services for trail design, building, repair and maintenance in an amount not to exceed \$50,000, payable from either Fund 225-125-1807 (Disaster Recovery, Finance, Parks, Recreation & Other) for flood related projects or Fund 205-130-1220-5530 (Parks, Community Resources, Parks Capital, Improvements Other than Buildings) for general trail work.

Approved:



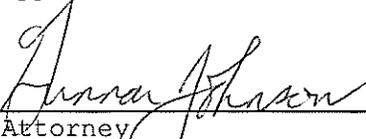
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PARKS KB:slw 10/2/2012

STATEMENT OF PURPOSE: This resolution authorizes a master services agreement with the International Mountain Bicycling Association (IMBA) for professional consulting services for trail design, building, repair and maintenance in an

amount not to exceed \$50,000. Under the terms of the agreement, IMBA will assist the city with the trails damaged by the floods by providing expert advice on the best approach to repair the flood-damaged trails. IMBA will also provide expert advice on the city's on-going project to expand the city's existing trails. Each task order will be issued by the manager of parks and recreation and will specifically describe the scope of services to be provided by IMBA. IMBA's services related to the flood damage will be reimbursed by FEMA.

MASTER SERVICES AGREEMENT

THIS AGREEMENT, by and between the CITY OF DULUTH, hereinafter referred to as "City", and the International Mountain Bicycling Association, hereinafter referred to as "IMBA".

WHEREAS, the City is in the process of expanding certain multi-purpose trails within its parks trail system and requires the services of an expert in trail design, building and maintenance (each a "Trail Project");

WHEREAS, the City also experienced substantial flood damage to the City's parks and trails and is in need of assistance from an expert in the restoration and/or rebuilding of the trails (each a "Flood Project");

WHEREAS, IMBA is an expert in trail design, building and maintenance and has represented itself as qualified and willing to perform the services required by the City for the Trail Projects and Flood Projects;

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

1. Services. IMBA shall provide to City the services in accordance with this Agreement and each task order (each, a "Task Order") which the parties may enter into from time to time executed by the parties and attached hereto (the "Services"). All such Task Orders shall be in substantially the same form as Exhibit A attached hereto and incorporated by reference, with such changes, if any, as the parties may agree in such Task Orders. Such Task Order will set out (i) a definitive description of the work covered by the Task Order, (ii) describe the location of the work to be done, setting forth the time parameters within which the work to be performed under the Task Order is to be completed, (iii) the applicable fees and payment terms for the Services; (iv) any responsibilities of Client and (v) any other pertinent terms and conditions. Each such Task Order shall be countersigned by IMBA, agreeing to the terms and requirements of the Task Order. All Task Orders shall be issued by the City Parks and Recreation Manager ("Manager") pursuant to the authority of this Master Services Agreement. Upon the issuance of the Task Order by the Manager and the countersignature by IMBA, such Task Order shall be deemed to be part of this Agreement and to be governed by the terms hereof. The work described in each Task Order shall specifically designate the services to be either a Trail Project or Flood Project. In the event of a conflict between the terms of this Agreement and the terms of a Task Order, the terms of this Agreement shall prevail unless a Task Order expressly provides that certain provisions therein shall control over specified provisions of this Agreement, in which case such provisions of the Task Order shall control.

2. Payment for Services. It is agreed between the parties that IMBA's maximum fee under this Agreement shall not exceed the sum of Fifty Thousand and 00/100th dollars (\$50,000.00) inclusive of all travel and other expenses associated with the Projects, payable from Fund 225-125-1807 for Flood Projects (Disaster Recovery, Finance, Parks, Recreation, & Other) and payable from Fund 205-130-1220-5530-CM205-Travrs (Parks, Community Resources, Parks Capital, Improvements Other Than Buildings) for Trail Projects. Payments will be made upon completion of each Task Order and upon receipt of an invoice. All invoices for services rendered shall be submitted to the attention of Kathy Bergen, Parks Manager. Payment of expenses is subject to the City's T&E reimbursement policy and receipt of reasonable substantiation/back-up supporting such expenses.

3. Term; Termination. The term of this Agreement shall commence on the Effective Date and shall continue, unless earlier terminated as provided for herein, for a period of one (1) year (the "Term"). Either party may, by giving the other party fifteen (15) days written notice, terminate this Agreement in whole or in part without cause. Either party may terminate this Agreement at any time prior to the end of the Term due to the other party's material breach of any of its obligations hereunder, which breach has not been cured to the non-breaching party's reasonable satisfaction within a reasonable time, not to exceed five (5) days, after receipt of written notice specifying such breach. IMBA shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by IMBA, 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 IMBA which gave rise to such breach.

4. Representations and Warranties. IMBA represents and warrants that:

- a. IMBA shall perform its respective duties in a professional and diligent manner in the best interests of City and in compliance with all applicable laws.
- b. IMBA and all personnel to be provided by it hereunder have sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements including electrical hazard compliant certification.
- c. IMBA has complied or will comply with all legal requirements applicable to it with respect to this Agreement. IMBA 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 IMBA 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 the IMBA contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the IMBA's knowledge threatened against the IMBA 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 IMBA to perform its obligations hereunder.
- f. The IMBA 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. Insurance.

- a. IMBA 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. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 30 days notice prior to any cancellation or modification shall be required; and in such event, IMBA 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.
- iv. City of Duluth shall be named as Additional Insured under the Public Liability and Automobile Liability, or as an alternate, IMBA may provide Owners-Contractors Protective policy, naming himself and City of Duluth. IMBA shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. IMBA to provide Certificate of Insurance prior to the execution of this Agreement evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included 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. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the IMBA's interests and liabilities.
- 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 IMBA, 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 IMBA, its employees, agents and representatives in the negligent performance of work covered by this Agreement. Certificates showing continued maintenance of such insurance shall be on file with the City during the Term of this Agreement.

6. Indemnity. IMBA will be liable for the negligence or willful acts or omissions of itself, its employees, officers, agents or contractors acting on its behalf or with its authority, and shall indemnify the City from any liability arising thereof.

7. General Terms and Conditions.

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

- b. Assignment. IMBA may not assign this agreement. City may assign this Agreement without the prior written consent of IMBA.
- c. Data and Confidentiality, Records and Inspection.
 - i. The City agrees that it will make available all pertinent information, data and records under its control for IMBA to use in the performance of this Agreement, or to assist IMBA wherever possible to obtain such records, data and information.
 - ii. All reports, data, information, documentation and material given to or prepared by IMBA pursuant to this Agreement will be confidential and will not be released by IMBA without prior authorization from the City.
 - iii. IMBA agrees that all work created by IMBA 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”). IMBA further agrees that to the extent the work is not a “work made for hire” IMBA 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. IMBA agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. IMBA represents and warrants that the work created or prepared by IMBA will be original and will not infringe upon the rights of any third party, and IMBA further represents that the work will not have been previously assigned, licensed or otherwise encumbered.
 - iv. Records shall be maintained by IMBA 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.
 - v. IMBA 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.
 - vi. IMBA shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
 - vii. IMBA 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 IMBA 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.

d. Independent Contractor.

- i. 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 IMBA 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. IMBA 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 IMBA's employees while so engaged, and any and all claims whatsoever on behalf of IMBA's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Paragraph 2 of this Agreement, IMBA'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 IMBA from liability or judgments arising out of IMBA's intentional or negligent acts or omissions of IMBA or its employees while performing the work specified by this Agreement.
- ii. 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.
- iii. IMBA expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

e. 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. 1st Street
Duluth, MN 55802
Attn: Parks Manager.

IMBA

International Mountain Bicycling
Association
207 Canyon - Suite 301
Boulder, CO 80302
Attn: Chris Bernhardt

f. Civil Rights Assurances

IMBA, 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.
- g. Laws, Rules and Regulations.
IMBA 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.
- h. 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. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.
- i. 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.
- j. 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.
- k. 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.
- l. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

- m. The captions contained in this Agreement are solely for convenience of reference and are not part of the Agreement and shall not be used in construing this Agreement or in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

CITY OF DULUTH

INTERNATIONAL MOUNTAIN BICYCLING ASSOCIATION

By: _____
Mayor

By: _____
Its _____
Printed Name _____

ATTEST:

City Clerk
Date: _____

By: _____
Its: _____
Printed Name _____

Approved as to form:

City Attorney

Countersigned:

City Auditor

EXHIBIT A
CITY OF DULUTH
PARKS AND RECREATION
PROJECT TASK ORDER

Provider: International Mountain Bicycling Association	Trail Project No.
Job Location:	Flood Project No.:

In accordance with the Agreement on file with the City of Duluth you are hereby authorized and instructed to do perform the following services:

Describe the services:

- 1.) Project name and job number.
- 2.) Clear and complete description of the work to be done, including all elements of work.
- 3.) Project location and physical job parameters.
- 4.) Specific listing of all "Supplementary Duties" and "Additional Services" IMBA is required to provide.

Work shall be performed on an hourly basis with a not to exceed cost of \$ as shown on the attached proposal from the consultant.

Agreed by: IMBA

Issued By: City of Duluth

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____