

**MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
CULTURAL RESOURCES PROGRAM
AND
CITY OF DULUTH**

THIS MASTER SERVICES AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), is made by and between the CITY OF DULUTH, a municipal corporation under laws of the State of Minnesota, hereinafter referred to as "City," and **Fond du Lac Band of Lake Superior Chippewa through its Cultural Resources Program**, located at 1720 Big Lake Road, Cloquet, MN 55720, hereinafter referred to as "FDL or FDL Tribal Monitor" for the purpose of rendering services to the City.

WHEREAS, various of the City's Departments having jurisdiction and control over many capital construction projects involving ground breaking activities with regard to which the City is required to undertake certain care and precautions to protect and preserve archaeologically and historically significant sites potentially impacted by such projects; and

WHEREAS, the City is in need of assistance in determining the probability that its project work will impact archaeologically and historically significant sites and of addressing the existence of such sites discovered in the course of project construction; and

WHEREAS, the City desires to utilize FDL to provide, upon request, field monitoring services on a non-exclusive, project by project basis to support the construction, operation, and maintenance to City Projects for fiscal years **2021 through 2026 inclusive**;

WHEREAS, FDL has represented that it is qualified and willing to perform services set forth in its proposal;

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

I. Services

FDL will provide, upon written request of the Director of the Department having jurisdiction

and control over a Project requiring archaeological and historical site service or the person designated by said director in writing to act on behalf of said Director (the "Director") in the form of a Statement of Work or similar documentation (each a "SOW") field monitoring services with regard to any Department Project as identified in the SOW. The services to be provided by FDL shall be those designated in the SOW (the "Services") which shall be provided in the manner described in the Fond du Lac Band of Lake Superior Chippewa Tribal Cultural Resource Monitoring and Unanticipated Discoveries Plan attached hereto as "**Exhibit A.**" In the event of a conflict between the provisions of Exhibit A and this Agreement, the terms and conditions of this Agreement shall be deemed to be controlling. The SOW requesting tribal monitoring services will be provided to FDL at least fourteen(14) days prior to the start of the Project.

II. Fees

The total contract amount over the term of the agreement shall not exceed Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), payable from the City fund identified in the SOW. Fees for the Services will be determined by the fee schedule in the form of that attached hereto as Exhibit B. The applicable fee schedule shall be that attached to the SOW. FDL may update the fees set forth on Exhibit B annually by December 15th, to take effect on January 1st of the following year for SOWs issued by the Director in said year by delivering a copy of the updated Exhibit B to the City's Chief Administrative Officer no later than December 20th of the year before the effective date of the update. All invoices for services rendered shall be submitted no more frequently than monthly to the Director, and shall be accompanied by such documentation as the Director shall reasonably request. Upon receipt of said invoice and appropriate documentation, the City shall reimburse FDL up to the amount set forth above.

III. General Terms and Conditions

1. Amendments.

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

2. Assignment.

FDL represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the Department. Provided that FDL will, in the event of an "unanticipated discovery" that FDL determines

requires further analysis, request authorization from the Director to subcontract an archeologist to analyze, review, study, research, and/or protect the site, area, or artifact(s) discovered. Upon receipt of such authorization from the Director, FDL shall subcontract for the services of an archeologist to provide such services. “Unanticipated discoveries” may include, but are not limited to, tribally significant resources, archeological features, habitation features (e.g., storage pits, intact hearths, foundations or other habitation features), stone alignment, stone circles, cairns, larger artifact concentrations with undisturbed contexts, faunal bone beds with cultural association. Such subcontracted archeologist will meet the standards of Secretary of the Interior’s Professional Qualification Standards for history (48 FR 44716) or for cultural anthropology/ethnography (62 FR 33715-33716).

3. Data and Confidentiality.

- a. The City agrees that it will make available all pertinent information, data and records under its control for FDL to use in the performance of this Agreement, or to assist FDL wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by FDL pursuant to this Agreement will be confidential and will not be released by FDL without prior authorization from the Department.
- c. All reports, data, information, documentation, and material that contains tribally sensitive or culturally significant information will not be released to the public without the Fond du Lac Band of Lake Superior Chippewa Tribal Historic Preservation Office’s express consent, in accordance with the Cultural Resources Program. If the City of Duluth wishes to release such reports, data, information, documentation, and material to the public, all tribally sensitive or culturally significant information will be redacted absent Fond du Lac’s express consent. Tribally sensitive or culturally significant information includes, but is not limited to, the location and contents of tribal burial sites, culturally significant and historic artifacts, and religious or ceremonial sites and artifacts.
- d. The City of Duluth agrees that the right, title, and interest in and to all work created by FDL for the City under this Agreement, including the entire copyright in the work, will remain the property of the Fond du Lac Band of Lake Superior Chippewa. FDL will allow the City to utilize the data, information, and materials contained in the work product produced by FDL under this Agreement for the City’s use as it see fit, except that any tribally sensitive or culturally significant information will not be released to the public without FDL’s consent according to section 3(c) of this Agreement
- e. Provided, however, that nothing to the contrary herein withstanding, all Government Data as defined in Minnesota Statutes § 13.02 Subd 7 of any kind whatsoever created by, used in or resulting from this agreement shall be governed by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

- f. Records shall be maintained by FDL 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.
- g. FDL 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.
- h. FDL shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- i. FDL 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 FDL 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. Standard of Performance.

FDL represents and warrants that:

- a. FDL and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. FDL and all personnel provided by it hereunder shall perform their 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. FDL has complied or will comply with all legal requirements applicable to it with respect to this Agreement. FDL 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 FDL 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 FDL contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the FDL's knowledge threatened against the FDL 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 FDL to perform its obligations hereunder.
- f. The FDL 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 shall continue until **December 31, 2026**, 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, FDL shall promptly deliver to the City all finished or unfinished documents and other writings prepared by FDL under this Agreement. FDL 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 FDL, 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 FDL 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 FDL 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. FDL 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 FDL's employees while so engaged, and any and all claims whatsoever on behalf of FDL's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, FDL'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. (Public Employee Retirement Association). Further, City shall in no way be responsible to defend, indemnify or save harmless FDL from liability or judgments arising out of FDL's intentional or negligent acts or omissions of FDL or its employees 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. FDL expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine. Nothing herein shall be construed or interpreted to affect a waiver of FDL's sovereign immunity.

7. Indemnity.

To the extent allowed by law, FDL 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 FDL's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with FDL's employees or contractors, or d) the use of any materials supplied by the FDL to the City unless such material was modified by City and such modification is the cause of such claim. The obligations of this section do not apply to claims or causes of action resulting solely from the City's negligence. This Section shall survive the termination of this Agreement for any reason.

8. Insurance.

FDL 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 **\$1,500,000** 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, FDL may provide Owners-Contractors Protective policy, naming himself and City of Duluth. **Upon execution of this Agreement**, FDL shall provide 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 \$1,500,000 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, FDL 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. FDL 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 FDL'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 #240
Duluth MN 55802
Attn: Director (signing the SOW)

FDL: Fond du lac Band of Lake Superior Chippewa
Cultural Resource Program
1720 Big Lake Road
Cloquet, MN 55720
Attn: Lance Northbird

10. Civil Rights Assurances

FDL, 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.
- c. Notwithstanding the foregoing, under FDL's Tribal Employment Rights Ordinance FDL shall give preference to Indian persons who apply for employment or are employed by the contractor in hiring, training opportunities and promotions when such Indian applicants or employees are similarly qualified for the position for which such hiring, training or promotion is undertaken.

11. Laws, Rules and Regulations

FDL 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 as of the date of attestation shown below.

CITY OF DULUTH

**FOND DU LAC RESERVATION
BUSINESS COMMITTEE**

By:

By:

Mayor

Kevin R. Dupuis, Sr., Chairman

Attest:

Date

City Clerk

Date Attested: _____

By:

Countersigned:

Ferdinand Martineau, Jr.,
Secretary/Treasurer

City Auditor Date

Approved as to form:

Date

Assistant City Attorney Date

EXHIBIT A

Fond du Lac Band of Lake Superior Chippewa Tribal Cultural Resource Monitoring and Unanticipated Discoveries Plan



Fond du Lac Band of Lake Superior Chippewa
Tribal Historic Preservation Office
1720 Big Lake Road
Cloquet, MN 55720

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ACRONYMS AND ABBREVIATIONS

<i>ACHP</i>	<i>Advisory Council on Historic Preservation</i>
<i>APE</i>	<i>USACE Section 106 Area of Potential Effect</i>
<i>FDL</i>	<i>Fond du Lac Band of Lake Superior Chippewa</i>
<i>FDLPM</i>	<i>Fond du Lac Cultural Project Manager</i>
<i>MIAC</i>	<i>Minnesota Indian Affairs Council</i>
<i>Minn. Stat.</i>	<i>Minnesota Statute</i>
<i>NPS</i>	<i>National Park Service</i>
<i>NRHP</i>	<i>National Register of Historic Places</i>
<i>OSA</i>	<i>Minnesota Office of the State Archaeologist</i>
<i>RFA</i>	<i>Responsible Federal Agency</i>
<i>SHPO</i>	<i>Minnesota State Historic Preservation Office</i>
<i>TCRM</i>	<i>Fond du Lac Tribal Cultural Resource Monitor</i>
<i>THPO</i>	<i>Fond du Lac Tribal Historic Preservation Officer</i>
<i>UDP</i>	<i>Unanticipated Discovery Plan</i>
<i>USACE</i>	<i>U.S. Army Corps of Engineers</i>

1 Fond du Lac Tribal Cultural Resources Monitoring

Project ground disturbing activities have the potential to uncover previously unknown archaeological sites, human skeletal remains, and many other cultural and natural elements. Project planning should anticipate even the remote possibility of a discovery. Although provisions in construction documents are established to avoid direct impacts to identified archaeological sites/Historic Properties, the intent of this plan is also to have provisions applicable to any instances where previously identified archaeological sites/Historic Properties are directly impacted in an unexpected/unanticipated manner during construction.

Fond du Lac Tribal Cultural Resource Monitors (TCRMs) manage unforeseen situations that are not directly addressed by Project documents. The TCRMs use professional judgment in the field to interpret environmental conditions and requirements that include Tribal cultural resources.

One (1) TCRM will be provided to represent the interests of Fond du Lac in the field during ground disturbing activities and as provided under certain permit conditions. The TCRM will work collaboratively with the Project Team to address concerns related to observed or suspected Tribal cultural resources including human remains.

The TCRM will be led by a Fond du Lac Project Manager (FDLPM). The TCRM will report daily to the FDLPM and on-site Project Representative. Fond du Lac shall coordinate, as necessary, should faunal or human remains or other significant cultural resources be encountered during construction, with other specialists or technical experts.

1.1 Tribal Cultural Resource Monitor Daily Activities

The TCRM coordinates daily activities with the FDLPM and on-site Project Representative. The TCRM will communicate any finds to the FDLPM who will contact the Project Representative, who will then coordinate communication with points of contact.

TCRM daily activities

- At the start of each workday, the TCRM will report to the FDLPM and on-site Project Representative to receive any daily safety/information briefings and receive updates regarding where construction will occur during that day.
- The TCRM will focus on compliance with requirements of permits issued by federal and state agencies and will communicate through daily reports submitted to FDLPM, as well as through daily communication with on-site Project Representative.
- It is anticipated that the TCRM will have access to the construction area as needed to conduct their work and shall attend construction meetings where compliance issues are discussed.
- The TCRM will provide a daily report to the FDLPM that includes the following. This information will be summarized into a final report that is provided to the Project Representative.
 - Date and time of locations monitored (e.g., by station, milepost or other)
 - Detailed description of observation of any cultural materials, archaeological materials, human remains, and other Tribal cultural resources

- Drawings as appropriate
- General soil type
- General construction observations
- Presence of modern debris and disturbance
- Summary of communication with the FDLPM and on-site Project Representative
- Photo-documentation of daily activities with scale
- Should the TCRM identify Tribal cultural resources, archaeological materials or human remains within the construction workspace, the FDLPM will initiate the notification process outlined in the Unanticipated Discoveries Plan.

2 Unanticipated Discoveries Plan

This Unanticipated Discoveries Plan (UDP) sets forth communication procedures and action items in the event archaeological resources (pre-contact and historic), other cultural resources, or human skeletal remains are discovered during construction activities. These measures were developed in accordance with applicable state and federal guidelines and best management practices.

The TCRM and FDLPM have the primary responsibility of initially distinguishing discoveries of significant archaeological and cultural resources or human skeletal remains from those that are neither.

The unanticipated discovery of significant archaeological and cultural resource sites and human skeletal remains require ceasing construction activities at the find location followed by a coordinated consultation effort among permitting agencies, landowners, and other interested parties, including Native American Tribes, as applicable. In the event that a suspected discovery is determined not to involve an archaeological or cultural resource or human skeletal remains, construction would resume and there would be no need for the consultation process; however, appropriate documentation of the event will occur.

2.1 Overview

When archaeological and cultural materials or suspected human skeletal remains are identified by a TCRM or Project staff during ground disturbing activities, the following procedures are implemented.

1. Contact the FDLPM.
2. The TCRM and FDLPM establish and delineate a 25-foot buffer around the edge of the discovery (using flagging and/or fencing) and advise the on-site Project Representative to halt all ground-disturbing activities within the buffered area until otherwise notified by FDLPM, and implement measures to protect the discovery from looting and vandalism, including a 24-hour watch, if necessary.
3. The FDLPM informs the Fond du Lac Tribal Historic Preservation Officer (THPO).
4. The FDLPM contacts the qualified Professional Archaeologist (in the case of archaeological materials) meeting the Professional Qualification Standards of the Secretary of Interior as stated in Title 48 Federal Regulation 44716 and/or Forensic Anthropologist (in the case of

suspected human skeletal remains) with a graduate degree in said discipline and a recognized body of work in the professional community, to conduct an assessment of the discovery. The Professional Archaeologist meets the qualification standards outlined in 36 Code of Federal Regulations (CFR) Part 61 in order to conduct the assessment. The Forensic Anthropologist is acknowledged as competent to positively identify human skeletal remains during the initial event of their discovery. The Forensic Anthropologist will work closely with the Office of the State Archaeologist (OSA) who has the statutory responsibility to authenticate human burials in Minnesota.

5. The Professional Archaeologist shall gather additional information from the discovery area and assess the potential significance and condition and integrity of the discovery according to the guidelines established by the National Park Service (NPS) in Bulletins 15 and 36 and their amendments.
 - **If the Professional Archaeologist determines the discovery is an archaeological site or cultural resource over 45 years of age**, the Professional Archaeologist will record as much information as possible to secure a Smithsonian Trinomial Number from the OSA. The FDLPM notifies the Project Representative that the process outlined below will be initiated.
 - **If the discovery is not an archaeological site or cultural resource greater than 45 years of age**, the Professional Archaeologist will document the discovery for the record and notify the FDLPM of their recommendation. The FDLPM will advise the Project Representative to restart ground-disturbing activities.
6. After permission to resume construction has been issued by the Responsible Federal Agency (RFA) and/or land-managing agency, as applicable, the FDLPM will advise Project Representative that the on-site Project Representative may restart ground-disturbing activities.

When contacted by the FDLPM, the Forensic Anthropologist shall investigate the site to make an assessment of the likely nature of the remains:

- **If the remains are likely human**, the FDLPM will notify the Project Representative that the process outlined below will be initiated.
- **If the discovery does not represent human skeletal remains**, the Physical/Forensic Anthropologist will document the discovery for the record and the FDLPM will inform the Project Representative to restart ground-disturbing activities.

2.2 Process for Discovery of Human Skeletal Remains and/or Historic Properties

2.2.1 Discovery of Human Skeletal Remains

When unmarked human burial or skeletal remains are encountered during construction activities, the Project Representative must comply with all applicable laws, specifically: Minnesota's Private Cemeteries Act (Minn. Stat. §307.08).

1. In the event that a human burial or skeletal remains are encountered during ground-disturbing construction activity, all construction shall immediately cease in the vicinity, and Project Representative will implement the following notification procedures:
 - Notify the local law enforcement agency.
 - As required by Minn. Stat. §307.08, Project Representative will notify the OSA of the find.
2. The FDLPM and/or THPO and Project Representative shall notify the appropriate authority of the find and consult regarding the appropriate measures to handle the discovery. Protocol is listed on following pages.

2.2.2 Discovery of Historic Properties

Upon the discovery of an archaeological site or cultural resource greater than 45 years of age, the FDLPM and/or THPO will undertake agency notification as follows.

1. If the Project has an associated Responsible Federal Agency (RFA), and if the discovery falls within the RFA's Section 106 Area of Potential Effect (APE), the FDLPM and/or THPO will advise the RFA of the resource and provide information regarding its significance and condition and integrity.
2. If the discovery falls within a jurisdictional area of the United States Army Corps of Engineers (USACE), the FDLPM and/or THPO, in consultation with the RFA (if applicable), will advise the USACE of the resource and provide information regarding its significance and integrity.
3. If the discovery is on state land, the FDLPM and/or THPO, in consultation with the RFA (if applicable), will advise the land-managing agency of the resource, along with the State Historic Preservation Office (SHPO) and Office of the State Archaeologist (OSA), and provide information regarding its significance, condition and integrity.
4. If the discovery is on private land, its disposition is subject to the discretion of the land owner.

2.2.3 Contacting Jurisdictional Agencies

2.2.3.1 Federal Agency Jurisdiction

1. The FDLPM and/or THPO, in coordination with Project Representative, will notify the RFA of the resource, along with SHPO and OSA and provide information regarding its significance, condition and integrity.
2. It is anticipated that within 24 hours of notification, the RFA is expected to provide notice of the discovery to other parties who may wish to participate in consultation, including but not limited to the USACE, SHPO, OSA, Minnesota Indian Affairs Council (MIAC), Tribal Historic Preservation Officers and Consulting Tribes, land-managing agencies, and private landowner(s), as applicable. It is anticipated that after 24 hours, consultation for eligibility and effect will continue in order for avoidance and mitigation options to be developed.
3. It is anticipated that the RFA shall have 5 calendar days following notification to determine the discovery's eligibility for listing on the National Register of Historic Places (NRHP) in consultation with the SHPO and OSA and other consulting parties. The RFA may extend the review period by an additional 7 calendar days by providing written notice to

consulting parties prior to the expiration of the 5-calendar-day period. It is anticipated that the RFA shall provide avoidance or mitigation treatment options by the end of the 5-calendar-day period.

4. For properties determined eligible for listing on the NRHP, the FDLPM and/or THPO, in coordination with Project Representative, shall notify the RFA and other consulting parties of the proposed treatment measures to resolve adverse effects to the discovered resource. The consulting parties shall comment on the proposed treatment measures within an anticipated 48 hours. The RFA shall ensure that the recommendations of the consulting parties are considered prior to granting approval of the proposed treatment measures. Once approval has been granted by the RFA, Project Representative shall carry out the approved treatment measures and, after doing so, Project may resume construction.
5. In the event of any disagreements between the consulting parties regarding the NRHP eligibility of the newly-discovered property or the treatment measures proposed to mitigate adverse effects to the property, the RFA shall seek and take into account the recommendations of the Advisory Council on Historic Preservation (ACHP). It is anticipated that within 48 hours of receipt of a request, ACHP shall provide the RFA with recommendations on how to resolve the dispute.
6. If, after consultation, the RFA determines that the discovery does not represent an NRHP-eligible resource, the RFA will direct the FDLPM and/or THPO and Project Representative to resume ground-disturbing activities at the discovery location at their discretion.

2.2.3.2 Non-Federal Public Lands

1. The FDLPM and/or THPO will notify the land-managing agency of the resource, along with SHPO and OSA and provide information regarding its significance and integrity. The OSA has the discretion to notify Native American Tribal officials and other state agencies as appropriate.
2. It is anticipated that the land-managing agency will have five (5) calendar days following notification to consult with the OSA and SHPO (per Minnesota Statute 138.40), and other consulting parties including Tribes, as necessary, about the assessment of the discovery to determine its eligibility, avoidance, and/or mitigation measures. NPS criteria of eligibility for listing on the NRHP will be considered as a guideline to determine the significance of the find and OSA and SHPO will be consulted during the assessment, but the land-managing agency is not obliged to apply NPS standards solely in making its decision. The land-managing agency may assume the resource is eligible for listing on the NRHP while consultation occurs and may require avoidance, impact minimization, or mitigation. The land-managing agency may extend the review period by an additional 7 calendar days by providing written notice to consulting parties prior to the expiration of the 5-calendar-day period. The land-managing agency shall provide avoidance or mitigation treatment options by the end of the 5-calendar-day period.
3. For properties determined to be historic, the FDLPM and/or THPO, in consultation with the RFA, if applicable, shall notify the land-managing agency, SHPO, OSA, and Consulting Tribes, and other consulting parties with information regarding the discovery of the find and any treatment and measures it proposes for resolving adverse effects to the resource. It is anticipated that the consulting parties shall provide their views on the proposed

treatment measures to Project Representative, the land-managing agency and other consulting parties within 48 hours. The land-managing agency shall ensure that the recommendations of the consulting parties are considered prior to granting approval of the proposed treatment measures. Once approval has been granted by the land-managing agency, Project Representative shall carry out the approved treatment measures and, after doing so, construction may resume.

4. If, after consultation, the land-managing agency determines that the discovery does not represent an NRHP-eligible or otherwise important resource, the land-managing agency will direct the FDLPM and/or THPO and Project Representative to resume ground-disturbing activities at the discovery location at their discretion.

EXHIBIT B

3 Attachment A: Tribal Cultural Resource Monitor Cost and Deliverables

This attachment details the Tribal Cultural Resource Monitor (TCRM) cost estimate, as outlined in this document.

In summary:

- The hourly rate for a TCRM and necessary support staff is **\$107.02**.
- Each TCRM that is on-site during Project ground breaking activities will be guaranteed a minimum of four (4) hours of compensation per day. This means that the City will pay Fond du Lac a minimum of **\$428.08** per day for each TCRM that is on-site during Project ground breaking activities.
- If unanticipated discoveries are identified, the FDLPM will engage a Professional Archaeologist (in the case of archaeological materials) meeting the Professional Qualification Standards of the Secretary of Interior as stated in Title 48 Federal Regulation 44716 and/or Forensic Anthropologist (in the case of suspected human skeletal remains) with a graduate degree in said discipline and a recognized body of work in the professional community, to conduct an assessment of the discovery. The hourly rate for the Professional Archaeologist is **\$118.00** (plus per diem at \$76.00 per day and lodging at \$100.00 per day) and a Forensic Anthropologist is **\$118.00** per hour (plus per diem at \$76.00 per day and lodging at \$100.00 per day); however, if unanticipated discoveries are not found, this cost will not be invoiced or may be reduced, depending upon the need for an Archaeologist and/or Forensic Anthropologist.

The following assumptions were utilized in the assembly of this scope and cost-estimate.

- One (1) TCRM will be on-site during Project ground breaking activities, in addition to support from Fond du Lac office personnel and the FDLPM to coordinate and oversee the TCRM. A qualified Archaeologist and Physical Anthropologist will be engaged, only if unanticipated discoveries are identified. If a Project requires overtime or if more than one (1) Tribal Monitor is needed, Fond du Lac will provide additional Tribal Monitors at the hourly rate provided above.
- If travel requires more than 50 miles roundtrip from 1720 Big Lake Road, Cloquet, MN. to Project location, other direct costs include per diem at \$76.00 per day and mileage at 57.5 cents per day.
- On inclement weather days, no labor costs can be expected with the exception of any necessary office tasks.

3.1 Project Notification

- When possible, the City of Duluth will provide a written Notice-to-Proceed two (2) weeks in advance in order to begin preparation.

3.2 Final Report Delivery

- The TCRM will provide a daily report of Tribal Monitoring activities to the FDLPM. This information will be summarized into a final report that is provided to the Project Representative.