

SERVICES AGREEMENT
(Purchase Order #_____)

This agreement (“Agreement”) between the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”) and The Jamar Company (“JAMAR”), with offices located at 4701 Mike Colalillo Drive, Duluth, MN 55807-2762.

WHEREAS, DEDA desires to enter into an agreement with a service provider to provide facilities service and preventive maintenance at DEDA’s Maintenance Repair and Overhaul Facility, located at 4600 Stebner Road, Duluth, MN 55803 the “MRO”); and

WHEREAS, JAMAR is in the business of providing facilities maintenance services and has represented itself as fully capable of providing the Services to its customers and that it is qualified and willing to perform the services; and

WHEREAS, DEDA wishes to engage JAMAR to provide the Services;

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

DEDA and JAMAR hereby agree to the following terms and conditions:

1. Services. Under the direction of DEDA’s Executive Director, JAMAR shall provide all personnel, services, tools, equipment and materials to perform maintain the MRO as are described in more detail in the Proposal dated October 6, 2020, which is attached to this Agreement as Exhibit A and incorporated by reference (the “Proposal”), except as hereinafter provided for. In the event of a conflict between the terms of this Agreement and any terms contained in the Proposal, the terms of this Agreement shall be deemed to be controlling.

2. Emergency Services. In addition to the providing the services specified in the Proposal during the hours set forth therein, JAMAR agrees to provide said services on a 24 hour per day/7 day per week basis under the terms of this Paragraph. JAMAR agrees to provide in writing to DEDA no more than two emergency call-out telephone numbers, at least one of which shall be manned at all times which the Executive Director may use to request services on an emergency basis. JAMAR agrees to have qualified maintenance personnel capable of responding to the emergency giving rise to the call-out on site at the MRO to respond to the request within two (2) hours of the Executive Director making the

request therefore. Call-out services shall be reimbursed as reimbursable expenses pursuant to the terms of the Proposal.

3. Rates/Price and Payment for Services. For satisfactory performance of the services set forth in the Proposal for up to Twenty (20) hours per week, JAMAR will be entitled to payment for services in the amount of Seven Thousand Eight Hundred Dollars (\$7,800) per month, subject to the following. In addition, JAMAR shall be entitled to reimbursement for the cost of small purchases of every day supplies and materials needed for routine maintenance, such as light bulbs, belts, filters, and cleaning supplies. Further with the prior written authorization of the Executive Director, JAMAR shall be entitled to reimbursement for the work of subcontractors for work beyond the capacities of JAMAR staff. Reimbursement of reimbursable expenses shall be supported by such reasonable documentation as the Executive Director shall reasonably require. The total amount payable under this agreement including reimbursable expenses shall not exceed \$110,000, unless the contract is modified by formal amendment. Payments shall be made from fund 866-860-5400. JAMAR shall be paid for the Services within thirty (30) days of DEDA's receipt of an invoice.

4. Term; Termination. The term of this Agreement shall be deemed to have commenced on August 1, 2020 and shall continue, unless earlier terminated as provided for herein, for a period of One (1) year (the "Term"), provided that either JAMAR or DEDA may terminate this Agreement without cause upon Sixty (60) days prior written notice to the other party as provided for in Section 14 below. In addition, 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 ten (10) business days, after receipt of written notice specifying such breach.

5. Representations and Warranties. JAMAR represents and warrants that:

- a. All services under this Agreement shall be performed by Rand Lally or under his supervision unless otherwise approved by the Executive Director.
- b. JAMAR shall perform its respective duties in a professional and diligent manner in the best interests of DEDA and in compliance with all applicable laws.
- c. JAMAR 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.

6. Insurance.

- a. JAMAR shall provide and maintain in full force and effect during the life of this Agreement the following minimum amounts of insurance:
 - (1) Workers compensation insurance in accordance with applicable law.
 - (2) 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; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
 - (3) City of Duluth and DEDA shall be named as Additional Insureds under the Public Liability and Automobile Liability and JAMAR will provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included. The City of Duluth nor DEDA represents or guarantees that these types or limits of coverage are adequate to protect the JAMAR's interests and liabilities.
- b. Such insurance shall protect JAMAR, 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 JAMAR, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that JAMAR is carrying the above described insurance in the specified amounts shall be furnished to DEDA prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with DEDA during the term of this Agreement.

7. Indemnification. To the extent allowed by law, JAMAR shall defend, indemnify and hold the City of Duluth and DEDA, 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 JAMAR'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 the JAMAR's employees or contractors, or d) the use of any materials supplied by the JAMAR to DEDA unless such material was modified by DEDA and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Data, Records and Inspection.

- a. DEDA agrees that it will make available all pertinent information, data and records under its control for JAMAR to use in the performance of this Agreement, or to assist JAMAR wherever possible to obtain such records, data and information.
- b. All customer addresses and other data or customer information provided to JAMAR by DEDA pursuant to this Agreement will be confidential and will not be released by JAMAR without prior authorization from DEDA.
- c. Records shall be maintained by JAMAR in accordance with requirements prescribed by DEDA 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.
- d. JAMAR 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.
- e. JAMAR shall be responsible for furnishing to DEDA records, data and information as DEDA may require pertaining to matters covered by this Agreement.
- f. JAMAR shall ensure that at any time during normal business hours and as often as DEDA may deem necessary, there shall be made available to DEDA for examination, all of its records with respect to all matters covered by this Agreement JAMAR will also permit DEDA 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.

9. Independent Contractors. The parties agree that they are independent contractors, and no agency, partnership, employment or joint venture arrangement shall be deemed to exist by virtue of this Agreement, performance hereunder or otherwise. No employee or independent contractor of JAMAR shall be deemed to have any employment or independent contractor relationship with DEDA by virtue of this Agreement or performance hereunder, and such individuals shall have no claim against DEDA for any employee benefits offered to employees of DEDA.

10. Assignment. JAMAR may not assign this agreement. DEDA may assign this Agreement without the prior written consent of JAMAR.

11. Amendment; Entire Agreement. This Agreement embodies the entire understanding of the parties and there are no other agreements or understandings, written or oral, in effect between parties relating to the subject matter hereof. This Agreement may be amended or modified only by an instrument signed by the parties.

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. 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.

14. Captions. 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.

15. Notices. Notices to be given from one party to the other under this Agreement shall be deemed to have been given if given in writing and sent to the other party by U.S. Mail, postage prepaid addressed to such party at the address set forth below or to such other address as such party shall have designated to the other in writing:

In the Case of DEDA

Duluth Economic Development Authority
411 West First Street
Room 418 City Hall
Duluth, MN 55802

In the Case of JAMAR

Jamar Company
4701 Mike Colalillo Drive
Duluth, MN 55807-2762

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

**DULUTH ECONOMIC
DEVELOPMENT AUTHORITY**

By:

Its President

Date

President's Printed Name

Its Secretary

Date

Secretary's Printed Name

THE JAMAR COMPANY

By:

Company Representative

Its:

Title of Representative

Date:

EXHIBIT A

PROPOSAL