

**MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
LAKE SUPERIOR CONSULTING, LLC.
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 LAKE SUPERIOR CONSULTING, LLC. located at 130 West Superior Street, Suite 500 Duluth, MN 55802, hereinafter referred to as "Consultant" for the purpose of rendering services to the City.

WHEREAS, the City desires to utilize Consultant's services on a non-exclusive, project by project basis to support the construction, operation, and maintenance of the city's natural gas operations; and

WHEREAS, Consultant has represented that it is qualified and willing to perform the services;

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

I. Services

Consultant will provide, upon written request of the city manager in the form of a Statement of Work or similar documentation (each a "SOW"), the services identified and attached hereto as "Exhibit A." The Consultant's fee schedule is attached hereto as "Exhibit B." The City shall not reimburse for overtime rates unless the overtime is requested and authorized by the City in advance. In the event of a conflict between the provisions of Exhibit A or Exhibit B and this Agreement, the terms and conditions of this Agreement shall be deemed to be controlling.

II. Fees

It is agreed between the parties that Consultant's maximum fee for the term of this Agreement shall not exceed the sum of Fifty Thousand and no/100 Dollars (\$50,000.00), payable from various appropriate funds, departments, agencies, and objects; project 1904. All invoices for services rendered shall be submitted monthly to the Director, and shall be accompanied by such documentation as the City shall reasonably expect. Upon receipt of said request and appropriate documentation, the City shall reimburse Consultant 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 Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment.

Consultant 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 City.

3. Data and Confidentiality.

- a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
- c. Consultant agrees that all work created by Consultant for the City is a “work made for hire” and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work (“City Property”). Consultant further agrees that to the extent the work is not a “work made for hire” Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.
- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.

- e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
 - f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
 - g. Consultant shall ensure that 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. Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.
4. Standard of Performance.

Consultant represents and warrants that:

- a. Consultant 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. Consultant 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. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which 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 Consultant contrary to the terms of any instrument or agreement.

- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.
- f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period.

The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2020, unless terminated earlier as provided for herein. The agreement may be renewed for two (2) additional one (1) year terms (each a "Renewal Term"), by mutual written consent of authorized representatives of the parties. Nothing herein guarantees any such renewal(s).

Either party may, by giving written notice specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor.

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Consultant 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 Consultant's employees while so engaged, and any and all claims

whatsoever on behalf of Consultant'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, Consultant'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 Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant 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. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity.

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

8. Insurance.

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

- a. Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** 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, Consultant may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Consultant shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation 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 shall be required; and in such event, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
 - c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
 - d. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
 - e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.
9. Notices.

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City:	City of Duluth 411 W First Street City Hall Room # 274 Duluth MN 55802 Attn: Jim Benning, Director
--------------	--

Consultant: Lake Superior Consulting, LLC
130 W. Superior St, Suite 500
Duluth, MN 55802
Attn: John Hoven

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations

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

12. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure

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

obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

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

15. Entire Agreement

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

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

CITY OF DULUTH

LAKE SUPERIOR CONSULTING, LLC

By: _____

By: _____

Mayor

Company Representative

Attest: _____

Its: _____

City Clerk

Title of Representative

Date Attested: _____

Date: _____

Countersigned:

City Auditor Date

Approved as to form:

City Attorney Date

**EXHIBIT A
SERVICES**

Services may include, but are not limited to, the following:

1. Feasibility Studies
2. Project Cost Estimating
3. Subject Matter Expert Consultations
4. Assistance with Cathodic Protection Special Projects
5. Specialized Pipeline Surveys
6. Performing Risk Assessment Analysis
7. Integrity Management Plan Implementation
8. Distribution Integrity Management Plan Implementation
9. Assist in compliance issues with Regulating Authorities
10. Specialized Welding Inspections

Customer: City of Duluth

Effective: January 1, 2020 - December 31, 2020

01. Engineering

Engineering Technician	\$75.00
Associate Engineer	\$95.00
Engineer	\$125.00
Lead/Staff Engineer	\$155.00
Senior Engineer	\$195.00
Principal Engineer	\$275.00
Expert Witness	Call for Proposal

02. Computer Aided Design

CAD Technician	\$75.00
CAD Designer	\$90.00
Senior CAD Designer	\$110.00

03. Geographic Information Systems

GIS Technician	\$65.00
GIS Specialist	\$85.00
GIS Manager	\$100.00

04. Survey Services

Survey Support	\$55.00
Survey Lead	\$100.00
Registered Land Surveyor	\$130.00

05. Trenchless Technologies

Generalist - Trenchless Technologies	\$95.00
Specialist - Trenchless Technologies	\$150.00
Senior Specialist - Trenchless Technologies	\$190.00

06. Commissioning / Start Up Support

Commissioning Specialist	\$110.00
Senior Commissioning Specialist	\$140.00

07. Welding Inspection

Welding Specialist, AWS CWI	\$105.00
-----------------------------	----------

08. Integrity Management Services

Associate, Integrity Management	\$95.00
Specialist I, Integrity Management	\$125.00
Specialist II, Integrity Management	\$155.00
Senior Specialist, Integrity Management	\$195.00
Principal Engineer, Integrity Management	\$275.00

09. Cathodic Protection

Cathodic Protection Technician	\$75.00
Cathodic Protection Technician I, NACE Certified	\$95.00
Cathodic Protection Technician II, NACE Certified	\$110.00
Cathodic Protection Technician III, NACE Certified	\$135.00
Senior Cathodic Protection Technician	\$135.00
Cathodic Protection Technician IV, NACE Certified	\$175.00
AC Mitigation Modeling	\$210.00

10. Coating Inspection

CIP I	\$100.00
CIP II	\$120.00
CIP III	\$175.00
Senior Coating Specialist	\$210.00

11. Geological / Environmental

Associate Geologist	\$95.00
Geologist	\$130.00
Senior Geologist	\$170.00

12. Nondestructive Testing

NDT Technician I	\$85.00
NDT Technician II, Limited	\$105.00
NDT Technician II	\$125.00
NDT Technician II (Shear Wave)	\$135.00
NDT Technician II (PAUT)	\$150.00
NDT Technician III	\$185.00
NDT Auditor	Call for proposal

13. Construction / Inspection Services

Craft Inspector	\$70.00
Craft Inspector II	\$100.00
Senior Craft Inspector / Foreman	\$130.00
Construction Technician	\$75.00
Lead Construction Technician	\$95.00
Construction Specialist	\$105.00
Operator	\$90.00
Senior Operator	\$115.00

14. Project Management / Other Services

Office Clerk	\$50.00
Technical Communications Editor	\$75.00
Scheduler I	\$95.00
Scheduler II	\$110.00
Scheduler III	\$130.00
Project Management Generalist	\$70.00
Project Accountant	\$80.00
Project Coordinator	\$95.00
Associate Project Manager	\$120.00
Project Manager	\$145.00
Senior Project Manager	\$175.00
Technical Records Auditor	\$90.00
Senior Technical Records / Compliance Auditor	\$110.00
Quality Auditor	\$100.00
Senior Quality Auditor	\$115.00

15. Software / Database Services

Data Entry Clerk	\$60.00
Data Technician	\$80.00
Senior Data Technician	\$110.00
Database Administrator	\$125.00
Network Analyst	\$85.00
Network Analyst II	\$100.00
Software Programmer I	\$90.00
Software Programmer II	\$115.00
Senior Software Programmer	\$145.00
Security Analyst	\$150.00
Security Analyst II	\$175.00

16. Specialty Services

Expert Witness / Soil Modeling / Facility Laser Scanning / etc.	Call for Proposal
---	-------------------

17. Vehicles / Heavy Equipment

4X4 Vehicle (Plus Mileage)	\$125.00
Argo	\$300.00
ATV	\$150.00
DOT Truck (Plus Mileage)	\$150.00
Job Trailer	\$150.00
Mileage	IRS Published Rate
Mini Excavator	\$350.00
Skid Steer	\$350.00
Skid Steer Attachment	\$200.00
Snowmobile	\$150.00
Technician Vehicle (Includes Small Tools) (Plus Mileage)	\$185.00
Trailer Single Axle	\$50.00
Trailer Dual Axle	\$100.00
UTV	\$180.00
Vibratory Plow	\$825.00

18. Equipment Packages

Commissioning E&I Package (Includes: 4x4, Commissioning Tools)	\$200.00
CIS Equipment Package (Includes Field Data Logger, GPS, Line Locator, 2 Stationary Data Loggers)	\$350.00
DCVG Survey Equipment Package (Includes DCVG Equip, Generator, Portable Current Source, GPS, Line Locator)	\$370.00
HDD Survey Equipment Package (Includes 1 Current Interrupter, Generator, GPS, Multi Meter, Portable Current Source, Soil Resistivity Meter, Zero Resistance Ammeter)	\$310.00
Direct Exam Equipment Package (Includes Direct Inspection Equipment, Coating Inspection Kit, Generator, Soil Resistivity Meter)	\$175.00
Survey Crew Field Equipment (Includes Magnetic Locator, Prism Pole, Tripod, Tribrach, Adapter, Prism, Navigation GPS, Lath Bag 48", Prism Adapter, Hammer, Prism Bag, Survey Sign W/Base, Traffic Beacon, Offset Pole Holder Kit, Fire Extinguisher (10 Lb.), First Aid Kit, Cones, 100' Tape, 25' Tape, & Topo Shoe)	\$40.00

19. Other Items

Equipment Rental / Consumables / Other Direct Costs	15% markup
Materials	15% markup
Magnetic Particle Consumables (Per 16 Oz Can)	\$30.00
Outside Services	15% markup
Nonstandard Photocopies / Document Assembly (Per Copy)	\$0.15
Per Diem (High/Low Substantiation Method – Overnight [Gt 65 Miles])	\$165.00
Per Diem M&I (High/Low Substantiation Method – Long Hours [Gt 9])	\$45.00
Postage / Overnight / Express Shipping / Freight Charges	10% markup
Special Insurance Requirements	COST
Travel And Living Expenses (Where Per Diem Does Not Apply)	10% markup
Ultrasonic Couplant	\$10.00

20. Equipment

4 Gas Detector	\$25.00
Abrasive Blasting Equipment	\$180.00
Air Mover - Venturi 2"	\$100.00
Air Vac / Air Lance (without Compressor)	\$375.00
Coating Inspection Kit	\$100.00
Creafom 3D Laser Equipment	\$800.00
Current Interrupter	\$40.00
DCVG / ACVG or PCM Survey Equipment	\$100.00
Electrical Resistivity Meter	\$150.00
Field Data Logger	\$100.00
Flame Ionization Detector	\$100.00
Fluke Scope Meter	\$50.00
Gas Sniffers	\$75.00
Generator	\$40.00
GPS Equipment	\$100.00
HV Holiday Detector	\$110.00
Hydrotest Data Recorder	\$100.00
Insulated Flange Testing Equipment	\$30.00
Key Hole Tool	\$125.00
Laser Scanner, 3D Facility Mapping	Call for Proposal
Leica BLK360 Laser Scanner	\$125.00
Line Locator	\$70.00
LV Holiday Detector	\$50.00
Multi Meter	\$20.00
Phased Array	\$350.00
Pin Brazer	\$185.00
PMI Gun	\$325.00
Portable Current Source	\$60.00
RTK GPS	\$210.00
Soil Resistivity / Grounding Meter	\$60.00
Stationary Data Logger	\$40.00
Stray Current Mapper	\$175.00
Telebrineller	\$30.00
Thermal Imaging Infrared Camera - Electrical / Mechanical	\$45.00
Total Station	\$50.00
Total Station - Robotic	\$200.00
Ultra Sonic Thickness Gauge (UT Straight Beam)	\$50.00
Ultra Sonic Thickness Gauge (UT Shear Wave)	\$250.00
Vibratory Plate Compactor	\$150.00
Zero Resistance Ammeter	\$50.00

* All rates charged daily unless otherwise noted