

**MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
DULUTH ARCHAEOLOGY CENTER, L.L.C.
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 **Duluth Archaeology Center, L.L.C.**, located at 5910 Fremont Street, Suite 1, Duluth, MN 55807, hereinafter referred to as "DAC" 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 DAC to provide, upon request, archaeologically and historically significant site Identification services and, if determined to be needed, archaeological and historical site Phase I and Phase II services and to provide 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, DAC 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

DAC will provide, upon written request of the Director of the Department having jurisdiction and control over any Project or the person designated by said director in writing to act on behalf of said Director (the "Director") shall in the form of a Statement of Work or similar

documentation (each a "SOW") archaeologically and historically significant site Identification services and, if determined by the Director to be needed, archaeological and historical site Phase I and Phase II services and to provide field monitoring services with regard to any Department Project as identified in the SOW. The services to be provided by DAC shall be those designated in the SOW (the "Services") which shall be provided in the manner described in the Duluth Archaeology Center, L.L.C. proposal 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.

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. DAC 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 DAC 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 DAC only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment.

DAC 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 DAC will, in the event of an "unanticipated discovery" that DAC determines requires further analysis, request authorization from the Director to analyze, review, study, research, and/or protect the site, area, or artifact(s) discovered. Upon receipt of such authorization from the Director, DAC shall 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 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 DAC to use in the performance of this Agreement, or to assist DAC wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by DAC pursuant to this Agreement will be confidential and will not be released by DAC without prior authorization from the Director.
- c. DAC agrees that all work created by DAC 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"). DAC further agrees that to the extent the work is not a "work made for hire" DAC 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. DAC agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. DAC represents and warrants that the work created or prepared by DAC will be original and will not infringe upon the rights of any third party, and DAC further represents that the work will not have been previously assigned, licensed or otherwise encumbered.
- d. 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.
- e. Records shall be maintained by DAC 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.
- f. DAC 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.
- g. DAC shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.

- h. DAC 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 DAC 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.

DAC represents and warrants that:

- a. DAC 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. DAC 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. DAC has complied or will comply with all legal requirements applicable to it with respect to this Agreement. DAC 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 DAC 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 DAC contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the DAC's knowledge threatened against the DAC 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 DAC to perform its obligations hereunder.
- f. The DAC 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, DAC shall promptly deliver to the City all finished or unfinished documents and other writings prepared by DAC under this Agreement. DAC 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 DAC, 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 DAC 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 DAC 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. DAC 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 DAC's employees while so engaged, and any and all claims whatsoever on behalf of DAC'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, DAC'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 DAC from liability or judgments arising out of DAC's intentional or negligent acts or omissions of DAC 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. DAC expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity.

- a. To the extent allowed by law, DAC 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 DAC'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 DAC's employees or contractors, or d) the use of any materials supplied by the DAC 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.

DAC 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, DAC may provide Owners-Contractors Protective policy, naming himself and City of Duluth. **Upon execution of this Agreement**, DAC 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, DAC 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. DAC 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 DAC'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)

DAC: Duluth Archaeology Center, LLC.
5910 Fremont Street, Suite 1
Duluth, MN 55807
Attn: Susan C. Mulholland

10. Civil Rights Assurances

DAC, 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

DAC 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.

DULUTH ARCHAEOLOGY CENTER, L.L.C.

CONTACT INFORMATION:

Contact Person: Susan C. Mulholland, president

Duluth Archaeology Center, L.L.C.

5910 Fremont Street, Suite 1, Duluth MN 55807

tel: 218-624-5489 fax: 218-249-0765 email: archcenter@aol.com

COMPANY SUMMARY:

The Duluth Archaeology Center (DAC) provides professional services for cultural resource management (CRM) investigations throughout Minnesota and adjacent states. Project types include pre-Contact (prehistoric) and Contact/post-Contact (historic) archaeology as well as architectural history. All projects are conducted to Minnesota State Historic Preservation Office (SHPO) and Office of State Archaeologist (OSA) standards (Anfinson 2011, Heritage Preservation Dept. 2017).

DAC is a Mn/DOT pre-qualified vendor for Archaeology Studies (I) and Geomorphology Studies. In addition, DAC is a women-owned small business with certification by the Small Business Administration. DAC is registered with Mn/DOT as a Disadvantaged Business Enterprise (DBE) and the Department of Administration as a Targeted Group Business (TGB).

DAC carries all appropriate insurance policies including liability as well as those required by law. Policy amounts include:

General Liability: \$2,000,000 per occurrence and \$3,000,000 general aggregate*
Professional/Technical Liability: \$2,000,000 per claim and \$2,000,000 per occurrence
Pollution Liability: \$2,000,000 per occurrence and \$2,000,000 general aggregate
Business Auto: \$2,000,000 liability combined single limit*
Workers Comp: \$500,000 per accident and \$500,000 each employee
* includes \$1,000,000 umbrella policy

Anfinson, S.F. 2011. *State Archaeologist's Manual for Archaeological Projects in Minnesota*. Office of the State Archaeologist, St. Paul.

Heritage Preservation Department. 2017. *Historic and Architectural Survey Manual*. Minnesota Historical Society, St. Paul.

CRM SERVICES

Archaeology

Phase IA review: office review of maps and documents to recommend whether survey is needed by literature and other documentary review

Phase I survey: field survey to locate historic properties (archaeological sites, structural remnants) by pedestrian walkover and shovel testing

Phase II evaluation: field work to evaluate archaeological sites for eligibility to National Register by formal excavation of units

Phase III data recovery: field work to mitigate impacts on archaeological sites from project by formal excavation of units

Construction monitoring: monitoring of construction activities for impacts on historic properties by close observation of ground disturbances

Architectural History

Structural inventory: field survey to identify standing structures (buildings, bridges, roads) by documentation of structures

Determination of Eligibility (DOE): field work to evaluate standing structures for eligibility to NR by evaluation of structures

Level II documentation: recordation of structural elements, including photodocumentation, of standing structures following MnSHPO standards.

DAC FACILITIES:

Approximately 1,150 square feet of office and artifact processing space.
Separate storage facility of approximately 2000 cubic feet.

Equipment:

Company vehicles for the transportation of crew and field equipment.

Word processing and in house publishing capabilities.

Graphics capabilities that include AutoCad, ArcGIS, and image scanning and enhancement.

Equipment for sediment coring (field) and grain size and loss on ignition analyses (lab)

Equipment to conduct Phase I, II and III CRM field and lab work.

Photography setup for artifact photographs in 35 mm and digital.

Other Resources:

Extensive library on the local and regional archaeology, soils, geology and Native American history.

Extensive lithic comparative collection with a primary focus on materials from Minnesota, Wisconsin, and North and South Dakota.

Faunal collection with emphasis on mammals from the upper Midwest.

Floral collection of macrofossils and phytoliths.

KEY PERSONNEL

DAC principal investigators have a extensive experience in archaeological projects, both pre-Contact and historic. Qualifications of key personnel are briefly summarized here; full resumes available upon request.

Susan Mulholland, president and principal investigator:

Ph.D. 1987, University of Minnesota, Ancient Studies (interdisciplinary archaeology)
Registered Professional Archaeologist
Meets Secretary of Interior standards for PI in archaeology;
holds Minnesota and Wisconsin archaeology licenses, Federal archaeology permits
Certified as Qualified Archaeologist under Wisconsin Burial Sites Preservation law (2016)
30 years of experience in Minnesota archaeology with emphasis on Northeastern MN
28 years (500+ projects) as PI and chief manager for cultural resource management
projects in Minnesota and adjacent region, including Phase I, II, and III projects

Jennifer Shafer, Graphics/GIS specialist:

M.A. 2002, University of Minnesota, Interdisciplinary Archaeological Studies
Registered Professional Archaeologist
Meets Secretary of Interior standards for PI in archaeology;
28 years of experience in Minnesota archaeology, specializing in ceramic studies
15 years specializing in GIS mapping

Lawrence Sommer, Architectural Historian, co-principal investigator for architectural history

M.A. 1971, University of Minnesota, History and Historic Preservation Studies
Meets Secretary of Interior standards for architectural history
40+ years of experience in Minnesota architectural history and historic preservation
Former SHPO for Nebraska and CEO of Nebraska and Montana State Historical Societies
specialization in historic preservation planning, architectural history, state and local history

APPROVED BY

Susan Mulholland

Name: Susan C. Mulholland

Date: July 21, 2021

Title: President, Duluth Archaeology Center

Exhibit B

DULUTH ARCHAEOLOGY CENTER PRICE LIST

Salaries (per hour)

Account Manager	\$ 47.56
Field/Lab-GIS Supervisor	45.70
Field/Lab Technician	45.22
Principal Investigator	65.17

Expenses (estimated) - actual amounts charged as incurred

lodging	\$120.00 per room/night
mileage*	0.575 per mile
per diem*	50.00 per person/day
copies	0.10 per page
mailing fees	As per USPS or other service
other direct expenses	will be charged as incurred

*current IRS rate shown, will be charged at IRS rate during the project

Specific Archaeological Fees

Minnesota Historical Society (curation of artifacts from public lands)

accession number	\$ 75 per number
storage box	285 per box (cubic foot)
processing fee	115 per visit toMHS

State Archaeology License (required on public land)/OSA Portal access (state site database)

currently there is no fee for State archaeology licenses or access to the Portal; that may change in the future as the agencies decide. Any fees for license applications, report reviews, or use of the Portal will be charged as incurred.

Current as of July 2021