



CITY OF DULUTH
REQUEST FOR PROPOSALS FOR
COASTAL INFRASTRUCTURE RESILIENCE RESEARCH & ASSESSMENT

RFP NUMBER 21-AA16

ISSUED April 7, 2021

PROPOSALS DUE Monday, April 26, 2021 at 12:00 (Noon) Central Time

SUBMIT TO

**CITY OF DULUTH
ATTN: PURCHASING DIVISION
CITY HALL, ROOM 120
411 WEST 1ST STREET
DULUTH, MN 55802**

PART I - GENERAL INFORMATION

I-1. Project Overview. The City of Duluth intends to apply for a FEMA Hazard Mitigation grant to cost-effectively increase the resilience of coastal infrastructure in the face of climate-driven increases in the frequency and severity of coastal storms and rising lake level on the coast of Lake Superior in St. Louis County, Minnesota. In advance of application for the grant, the city is issuing two Requests for Proposals (RFP); one for qualified consultant(s) to provide research and assessment services, and a second RFP to perform outreach services that will inform and advise local governments, stakeholders, and the public of various methods proposed. This RFP is for the research and assessment services.

The City is soliciting proposals from qualified consultant(s) to provide practical solutions to the red clay/dune sand erosion/bank failure and the resulting risks to storm, sanitary, water delivery, and transportation infrastructure on the North Shore of Lake Superior from Brighton Beach to the French River, select areas in the St. Louis River Estuary and select areas on Minnesota Point, a spit of land that forms a barrier for the Duluth Harbor. The objectives of this project are to identify and demonstrate economically feasible methods of reducing bank collapse; to assess the capabilities of partner institutions to cooperatively implement an erosion control program; and to provide data and recommendations, including asset removal, that could be used in similar situations and locations.

The awarded Proposer will provide research and assessment, develop options and suggest the most economical and effective solution to the impact of bank collapse, conduct a FEMA benefit/cost analysis of the chosen option(s) and provide a timeline for implementation. The awarded Proposer will be expected to lead an interdisciplinary science and engineering team with subcontractors and must have extensive experience in project management as well as knowledge of climate change and resiliency theories.

The awarded Proposer will collaborate with a separate consultant who will convene and facilitate an interagency advisory group. This group will include agencies with permitting authority and industries or organizations with public-serving infrastructure, such as sanitary districts, rail and port authorities, St. Louis County, MN Department of Transportation, and utility companies.

It is expected that this project will lead to a Hazard Mitigation Grant Program (HMGP) proposal for implementation. The funding period is 15 months, with an option to extend to 24 months. Additional detail is provided in **Part IV** of this RFP.

I-2. Calendar of Events. The City will make every effort to adhere to the following schedule:

Activity	Date
Pre-proposal Conference via Webex	Tue. 4/13/21; 11:00am – 12:30pm

Deadline to submit Questions via email to purchasing@duluthmn.gov	Thur, 4/15/21
Answers to questions will be posted to the City website no later than this date.	Mon., 4/19/21
Proposals must be received in the Purchasing Office by NOON on this date.	Mon., 4/26/21

I-3. Rejection of Proposals. The City reserves the right, in its sole and complete discretion, to reject any and all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in its best interests. The City is not liable for any costs the Proposer incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

I-4. Pre-proposal Conference. The City will hold a virtual pre-proposal conference via Webex at the date and time specified in the Calendar of Events. Interested Proposers may attend by visiting <https://www.duluthmn.gov/purchasing/bids-request-for-proposals> and clicking the appropriate link. Attendance is not mandatory, but is strongly encouraged.

I-5. Questions & Answers. Any questions regarding this RFP must be submitted by e-mail to the Purchasing Office at purchasing@duluthmn.gov **no later than** the date indicated on the Calendar of Events. Answers to the questions will be posted as an Addendum to the RFP.

I-6. Addenda to the RFP. If the City deems it necessary to revise any part of this RFP before the proposal response date, the City will post an addendum to its website <https://www.duluthmn.gov/purchasing/bids-request-for-proposals/>. Although an e-mail notification will be sent, it is the Proposer's responsibility to periodically check the website for any new information.

I-7. Proposals. To be considered, hard copies of proposals must arrive at the City on or before the time and date specified in the RFP Calendar of Events. The City will not accept proposals via email or facsimile transmission. **Due to the closure of City Hall as a result of the pandemic, proposals cannot be dropped off in the Purchasing Office. There is a black drop box on the 2nd Street side of City Hall near the parking spaces with an opening that is 11in x 3in. If your proposal is larger than the opening, you must submit it via a delivery or carrier service such as USPS, FedEx, or UPS. It is recommended that you have proposals delivered the day before the deadline to ensure they reach the destination on time.** The City reserves the right to reject or to deduct evaluation points for late proposals.

Proposals must be signed by an authorized official. If the official signs the Proposal Cover Sheet attached as Appendix A, this requirement will be met. Proposals must remain valid for 90 days or until a contract is fully executed.

Please submit one (1) paper copy of the Technical Submittal and one (1) paper copy of the Cost Submittal. The Cost Submittal should be in a separate sealed envelope. In addition, Proposers shall submit one copy of the entire proposal (Technical and Cost submittals, along with all requested documents) on flash drive in Microsoft Office-compatible or pdf format.

All materials submitted in response to this RFP will become property of the City and will become public record after the evaluation process is completed and an award decision made.

I-8.Small Diverse Business Information. The City encourages participation by minority, women, and veteran-owned businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use minority, women, veteran-owned and other disadvantaged business entities as subcontractors and suppliers. A list of certified Disadvantaged Business Enterprises is maintained by the Minnesota Unified Certification Program at <http://mnucp.metc.state.mn.us/> .

I-9.Form & Term of Contract. It is anticipated that the resulting contract will be a standard city consulting services agreement, a sample of which is attached. Additional provisions, terms, and conditions required by the funding agency are also attached. The term of the contract will begin once the contract is fully executed (anticipated by May 14, 2021) and end by June 30, 2022. The selected Proposer shall not start the performance of any work nor shall the City be liable to pay the selected Proposer for any service or work performed or expenses incurred before the contract is executed. Please note that this contract will be funded through FEMA HMGP Advanced Assistance. Execution of a contract is contingent on the City receiving these funds.

I-10. Mandatory Disclosures. By submitting a proposal, each Proposer understands, represents, and acknowledges that:

- A. Their proposal has been developed by the Proposer independently and has been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor or suppliers of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit independent bidding or competition, and that the contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer.
- B. There is no conflict of interest. A conflict of interest exists if a Proposer has any interest that would actually conflict, or has the appearance of conflicting, in any manner or degree with the performance of work on the project. If there are potential conflicts, identify the municipalities, developers, and other public or private entities with whom your company is currently, or have been, employed and which may be affected.

- C. It is not currently under suspension or debarment by the State of Minnesota, any other state or the federal government.
- D. The company is either organized under Minnesota law or has a Certificate of Authority from the Minnesota Secretary of State to do business in Minnesota, in accordance with the requirements in M.S. 303.03.

I-11. Notification of Selection. Proposers whose proposals are not selected will be notified in writing.

PART II - PROPOSAL REQUIREMENTS

Proposers must submit a complete package in order to be considered. The ideal submission package includes each of the sections below, in the following order:

II-1 Technical Proposal.

1. Cover letter - A letter of up to two pages highlighting the proposed project team. The letter should indicate a single point of contact/overall project manager. The cover letter should also include: the firm's name, e-mail address, business address, telephone and fax number, federal I.D. number, and Minnesota tax I.D. number (if applicable). The cover letter must state that the firm (with teamed partners identified) has personnel with the qualifications necessary to complete work of the project. The letter should also explain the benefits of using your company's/team's services.
2. Relevant projects - Include a maximum of six projects that highlight the team's and/or team members' experience coordinating with another contractor working on other components of the same project. The strongest package will demonstrate direct experience collaborating with other consulting firms and/or working with municipalities. There is no prescribed format for this section, however it will be limited to six pages in length.
3. Resumes - Please submit a one-page resume for each proposed team member, highlighting his or her experience. Resumes will be limited to a 10-page maximum total.
4. A proposed Work Plan with a timeline.

II-2 Cost Proposal.

The Cost Proposal must be sealed separately from the Technical Proposal and shall include a proposed lump sum fee to perform the Work along with a Personnel and Materials Fee Schedule.

PART III - CRITERIA FOR SELECTION

The proposals will be reviewed by an evaluation team consisting of city staff, grant consultants and other stakeholders. The intent of the selection process is to review proposals and make an award based upon qualifications as described therein. A 100-point scale will be used to create the final evaluation recommendations. The factors and weighting on which proposals will be judged are:

Qualifications of the Proposer and Personnel	40%
Prior experience with similar work	30%
Work Plan	10%
Cost	20%

PART IV – PROJECT DETAIL

IV-1 Background.

On October 10-11, 2018, a severe storm hit the City of Duluth with sustained winds of 35 to 40 mph. Wind gusts over 60 mph, and waves reaching 18 to 20 feet were recorded. The near-record water levels on the lake, coupled with the strong winds and storm surge, created waves that were stronger and more destructive than two previous storms that damaged City shoreline less than a year earlier. Portions of the Duluth shoreline, Lakewalk, and storm water infrastructure had been significantly damaged in two previous storms; and the October 2018 storm thoroughly devastated the Lakewalk and large areas of City-owned shoreline from Minnesota Point to the City limits, and additional areas from the city limits to the French River that are owned by the State of Minnesota and managed by St. Louis County. See Additional Information – Study Areas for details.

IV-2 Advance Assistance Program.

The Sandy Recovery Improvement Act of 2013 gives FEMA authority to provide up to 25 percent of the amount of estimated Hazard Mitigation Grant Program funds to a state in advance of incurring eligible costs. The purpose of Advance Assistance is to streamline the HMGP process by providing states with resources to develop mitigation strategies that prevent likely disasters and obtain data to prioritize, select and develop complete HMGP applications in a timely manner.

IV-3 Tasks & Deliverables.

1. Generally, tasks shall include the following:
 - Identify resources to develop cost-share strategy and identify potential match funding;
 - Evaluate areas to determine appropriate mitigation actions;
 - Incorporate environmental considerations early into program decisions;
 - Collect data for cost-benefit analyses, environmental compliance and other program requirements;
 - Scope and prioritize hazard mitigation options to incorporate sustainability and resilience;
 - Develop hazard mitigation projects, including engineering design and feasibility actions;

- Conduct meetings, engagement and coordination with qualified consultants/experts in the field, either virtually or in-person where appropriate, and may include room/facility rentals, printing, and refreshments;
- Conduct engineering design and feasibility studies;
- Conduct hydrologic and hydraulic studies for shoreline to submit hazard mitigation projects;
- Perform professional cost estimation services to aid consistency in project budgeting across sub-applications;

2. Specific tasks shall include:

- a. Conducting a risk assessment for coastal erosion and flooding along the shoreline of Lake Superior extending from Brighton Beach to the French River, the soccer field area in Park Point Recreation Area and storm water outfalls including:
 - Development of shoreline erosion estimates using deterministic and probabilistic methods incorporating hydraulic modeling, historic trends and climate change forecasts, the potential variability of the lake levels and coastal storms with different intensities and frequencies. Erosion models will address the importance of local bedrock and glacial geology, coastal geomorphology, and hydrogeology.
 - Identification of critical public infrastructure assets, including utility infrastructure, flood or retaining walls, and public gathering spaces, roadways, and pedestrian/bike trails, vulnerable to shoreline erosion and wave hazards.
 - Visual Condition Assessment of critical assets that are not buried or submerged.
 - Risk Matrix for all assets assessed including current condition, likelihood of failure, and consequence of failure.
 - Prioritization of critical infrastructure assets removal and replacement/relocation, upgrades, or fortification based on risks.
 - Assessment of the functional and financial consequences to those assets over time if no action is taken.
- b. Development of potential mitigation remedies for vulnerable assets incorporating applicable design requirements. Requirements for further engineering study, environmental permitting and historic property impacts shall be summarized. The Approach will include:
 - Developing a cursory map of shoreline areas impacted. Impacted shoreline will be prioritized based on shoreline erosion. Maps shall also indicate high risk public infrastructure.
 - Developing Concept level drawings of highly or moderately impacted shoreline and critical infrastructure and the associated mitigation strategy
 - Developing Opinions of Probable Construction/Removal/Replacement Cost for each alternative.
 - Developing a Permit Matrix
 - Consideration of public and stakeholder priorities, and acceptance and/or concerns with alternatives.

- c. Pre-disaster Mitigation Grant Application development support. Support will include FEMA benefit-cost analysis of preferred alternative and recommendations for implementation. Proposed project description, conceptual design drawings and cost estimate for advancement of environmental permitting, design, construction and project management. The cost estimate must meet FEMA requirements as follows:
- Prepared by a licensed Professional Engineer or other estimating professional, such as a licensed architect or certified professional cost estimator who certifies that the estimate was prepared in accordance with industry standards;
 - Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage;
 - Is based on unit costs for each component of the scope of work (SOW) and not a lump sum amount;
 - Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon SOW; and
 - Is reasonable.

IV-4 Additional Information.

Since the first settlers arrived in the western Lake Superior basin, the red clay soils dominating the region have presented problems. The primary concern was the pervasiveness of the erosion problem and associated damages and costs. The red clay of the western Lake Superior basin extends in a narrow band from northeastern Minnesota to the western portion of Michigan's Upper Peninsula. The predominant soils in this area are red clays interspersed with sands and silts; these sediments are of glacial origin and are exposed along much of Lake Superior's shoreline, where they are undergoing a high rate of natural erosion. The heterogeneous mixture of clay and sand produces soils with very little stability which, when exposed to varying moisture conditions on steep slopes, erode severely. Figure 1 illustrates areas of the Lake Superior watershed that are representative of the conditions.

Since 2017, storm events have brought sustained winds from the northeast that produced substantial waves, which combined with storm surge and high-water levels, resulted in significant shoreline erosion and damage to existing coastal structures. The North Shore where the red clay is exposed suffered considerable damage to stormwater outfalls and wayside rest areas. Many places the eroded bank is just feet from the roadway.

The Scenic North Shore Drive/Congdon Blvd is the only access road for North Shore residents; is the ROW for potable water and sewer; and is a critical tourism facility, providing access to the North Shore and serving as a venue for significant revenue-generating events such as Grandma's Marathon and In-line Marathon.

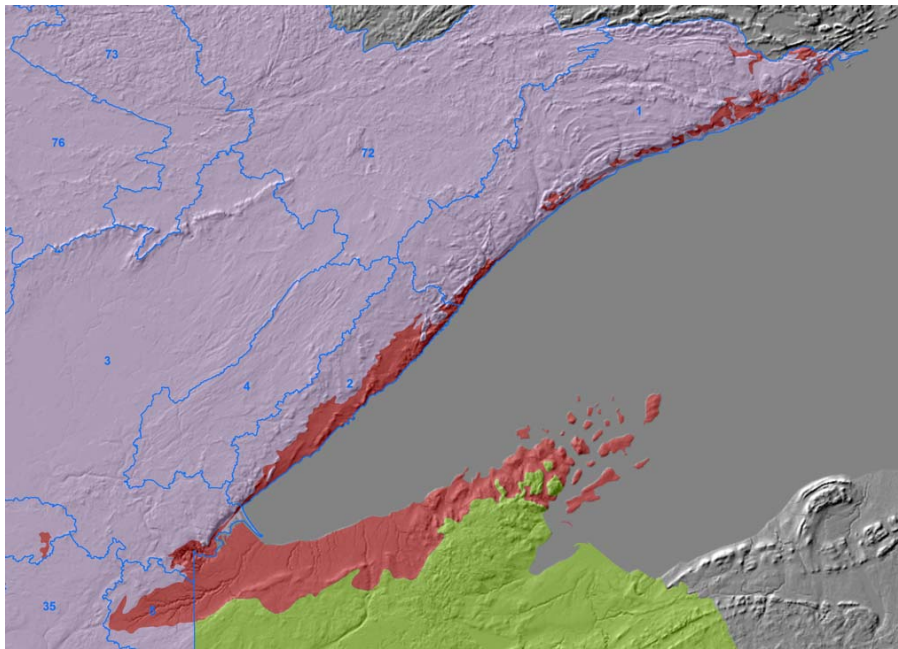


Figure 1: Extent of red clay soils. Source:¹ Red Clay Project

Minnesota Point, (Figure 2) seven miles long and averaging 500 feet wide, is geologically part of a continuous, sandy, baymouth bar that stretches between Duluth and Superior. The middle of the bar is submerged, creating the natural entry that separates Minnesota Point on the northwest from Wisconsin Point on the southeast. This sandbar was formed primarily by sands carried from the South Shore and deposited by lake currents.

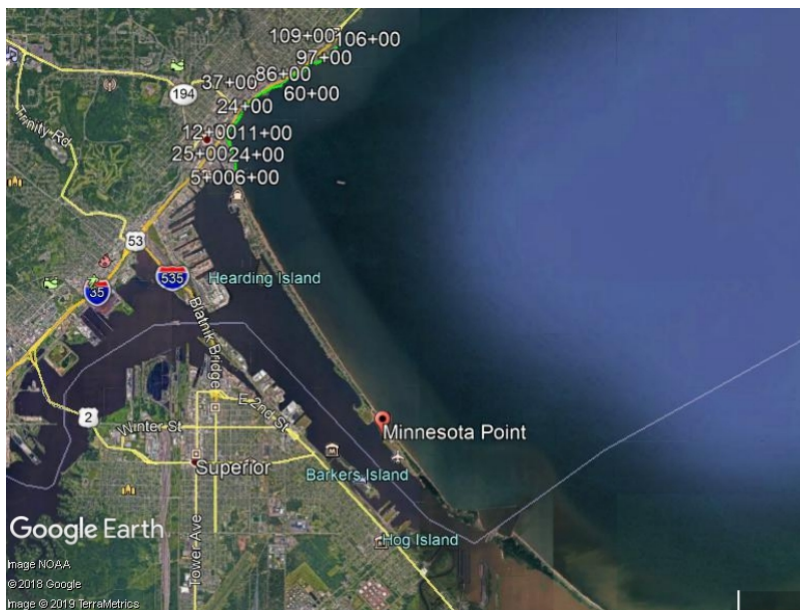


Figure 2: Minnesota point

The sandbar protects a natural harbor, but is extremely vulnerable to the erosive forces of Lake Superior. On the bay side, the land is relatively low and is therefore susceptible to flooding and wave-induced erosion. Lake Superior's record high water levels during the 1950s, mid-1970s, 1985–86, and 2018/19 caused flooding on Minnesota Point. Modest increases in water levels dramatically affect land use, especially on the bay side, where facilities are just a few feet above the average water level.

The sandbar has been modified in several ways, including the construction of a shipping channel near downtown Duluth. The construction of a breakwater to protect the natural channel on the Wisconsin side has blocked the movement of sediments from the south shore that have naturally replenished the Minnesota dunes. This has dramatically accelerated deposition on the south western side of the Wisconsin breakwater and has seen equally dramatic erosion on the Minnesota side. The constructed channel is experiencing scouring on the eastern side.

Principles:

City of Duluth

- Property, Parks and Libraries Department
- Public Works Department
- Planning Department
- Fire Department

St. Louis County

- Public Works Department
- Sheriff's Department Emergency Management Division

Study Area: Segments of the Lake Superior coastline with public infrastructure vulnerable to damage from Lake Superior storms but for which there is insufficient information to develop specific hazard mitigation projects. Please see Exhibits 1 and 2 in Appendix B.

- 1. North Shore Scenic Drive Segment #1: Exhibit 1:** St. Louis County border at Knife River to City of Duluth boundary at Minnesota DNR McQuade Small Craft Harbor.
Length: 8.7 miles
Jurisdiction: St Louis County, as owner of County State Aid Highway 61.
Vulnerable Public Infrastructure: Road, stormwater, sewer, and wayside infrastructure located close to coastal bluffs.
Associated Private Property: Homes that, at present, may only be accessed via North Shore Scenic Drive.
- 2. North Shore Drive Segment #2: Exhibit 1:** City of Duluth boundary at Minnesota DNR McQuade Small Craft Harbor to north end of Brighton Beach Road.

Length: 4.5 miles

Jurisdiction: City of Duluth

Vulnerable Public Infrastructure: Road, stormwater, sewer, potable water, and wayside infrastructure located close to coastal bluffs.

Associated Private Property: Homes that, at present, may only be accessed via North Shore Scenic Drive.

3. **Isolated Coastal Assets: Exhibit 1:** Utility lift stations at 60th Avenue East and 23rd Avenue East

Length: na

Jurisdiction: City of Duluth

Vulnerable Public Infrastructure: Lift stations

Associated Private Property: None

4. **Park Point South : Exhibit 2:** Segment of shoreline on the bay side within Park Point Community Recreation Area ending at the airport.

Jurisdiction: City of Duluth

Vulnerable Public Infrastructure: Road, boat access, and parking lots.

Associated Private Property: None

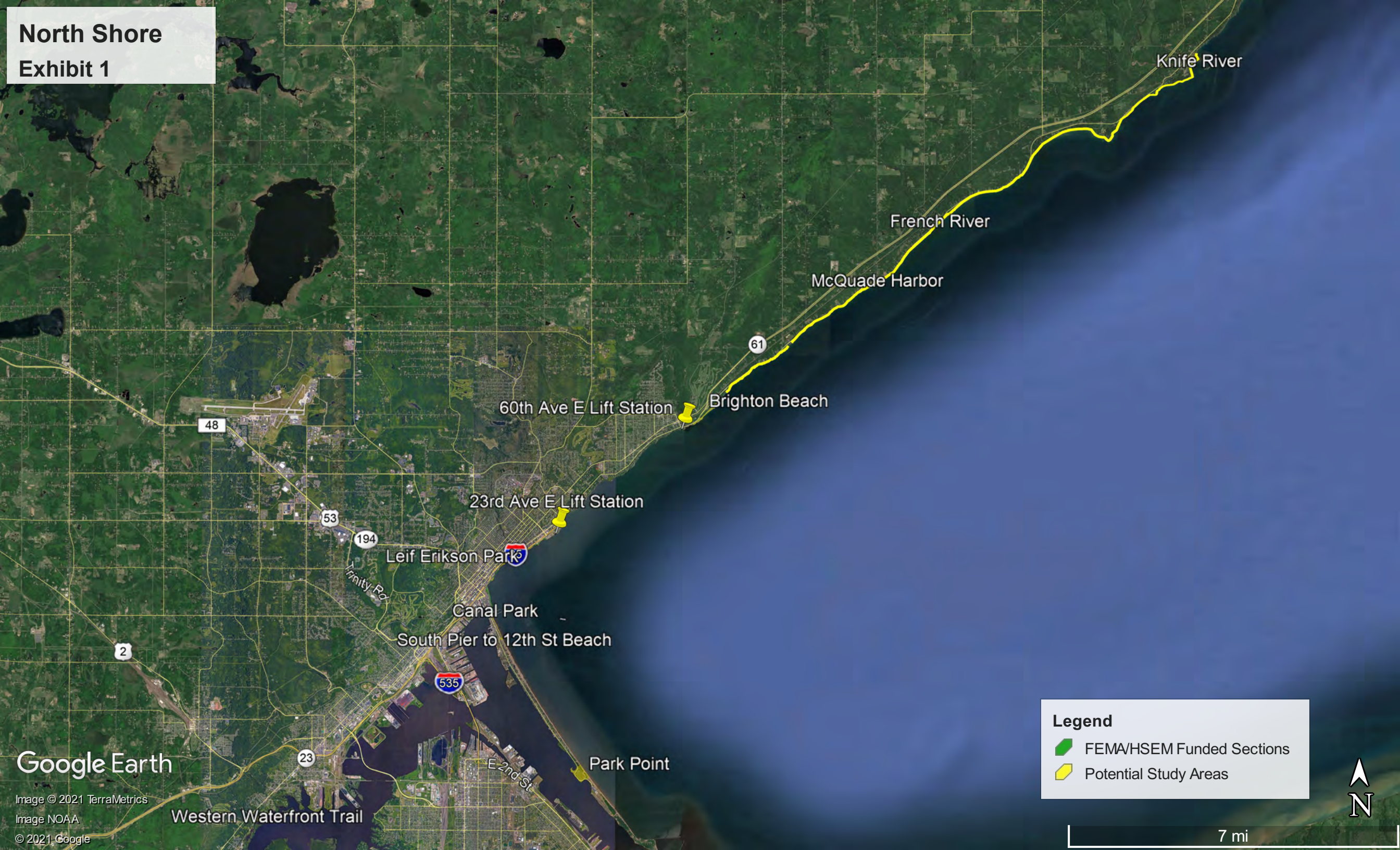
¹ John Jereczek, Paul Sandstrom, Valerie Brady, Brian Fredrickson, Cliff Bentley Jesse Schomberg, Brian Hill, Marty Rye, Carl Haensel. IMPACT OF NONPOINT POLLUTION CONTROL ON WESTERN LAKE SUPERIOR RED CLAY PROJECT FINAL REPORT: SUMMARY
http://www.lrcd.org/uploads/1/6/4/0/16405852/red_clay_proj_rep._sum_i.pdf

**APPENDIX A - PROPOSAL COVER SHEET
CITY OF DULUTH
RFP 21-AA16
COASTAL INFRASTRUCTURE RESILIENCE RESEARCH & ASSESSMENT**



Proposer Information:	
Proposer Name	
Mailing Address	
Contact Person	
Contact Person's Phone Number	
Contact Person's E-Mail Address	
Federal ID Number	
Authorized Signature	
Title	

**APPENDIX B - EXHIBITS
CITY OF DULUTH
RFP 21-AA16
COASTAL INFRASTRUCTURE RESILIENCE RESEARCH & ASSESSMENT**

North Shore
Exhibit 1



Legend

-  FEMA/HSEM Funded Sections
-  Potential Study Areas

Google Earth

Image © 2021 TerraMetrics
Image NOAA
© 2021 Google

7 mi



Park Point
Exhibit 2



Park Point

Minnesota Ave

Legend

-  FEMA/HSEM Funded Sections
-  Potential Study Areas



800 ft

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN**

Click or tap here to enter text.

**AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the “Effective Date”), by and between the City of Duluth, hereinafter referred to as City, and Click or tap here to enter text. located at Click or tap here to enter text., hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services for Click or tap here to enter text., (the “Project”); and

WHEREAS, Consultant has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, Consultant submitted a proposal to provide services for the Project (the “Proposal”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the City desires to utilize Consultant’s professional services for the Project;

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

I. Services

Consultant will provide services related to the Project as described in Consultant’s Proposal (the “Services”). Consultant agrees that it will provide its services at the direction of the Click or tap here to enter text. (“Click or tap here to enter text.”). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

II. Fees

It is agreed between the parties that Consultant’s maximum fee for the Project and Services shall not exceed the sum of Click or tap here to enter text. and Click or tap here to enter text./100th dollars (\$Click or tap here to enter text.) inclusive of all travel and other expenses associated with the Project, payable from Fund Click or tap here to enter text.. All invoices for services rendered shall be submitted monthly to the attention of the Click or tap here to enter text.. Payment of expenses is subject to the City’s receipt of reasonable substantiation/back-up supporting such expenses.

III. General Terms and Conditions

I. 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. The Primary Consultant(s) assigned to this project will be [Click or tap here to enter text.](#) (the “Primary Consultant”). The Primary Consultant shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Primary Consultant. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Consultant in connection with Consultant’s obligations hereunder.

3. Data and Confidentiality, Records and Inspection

- 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 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. Consultant Representation and Warranties

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 performance shall be completed by [Click or tap here to enter text.](#), 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, 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. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of 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. **Upon**

execution of this Agreement, Consultant 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, 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 [Click or tap here to enter text.](#)
Duluth MN 55802
Attn: [Click or tap here to enter text.](#)

Consultant: [Click or tap here to enter text.](#)
[Click or tap here to enter text.](#)
[Click or tap here to enter text.](#)

Attn: [Click or tap here to enter text.](#)

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

Click or tap here to enter text.

By:

By:

Mayor

Company Representative

Attest:

Its:

City Clerk

Title of Representative

Date Attested: _____

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

City of Duluth
Supplementary Provisions – State & Federal Funding
21-AA 16 RFP Coastal Infrastructure Resilience Research and Assessment

1. Disbursements

- a. No money under this Contract shall be disbursed by the City to any Contractor unless the Contractor is in compliance with the Federal Agency requirements with regard to accounting and fiscal matters to the extent they are applicable.
- b. Unearned payments under this Contract may be suspended or terminated upon the Contractor's refusal to accept any additional conditions that may be imposed by the Federal Agency at any time; or if the grant, if applicable, to the City under which this Contract is made is suspended or terminated.

2. Subcontracting Requirements

- a. The Contractor shall include in any subcontract the clauses set forth in these City of Duluth Supplementary Provisions in their entirety and shall also include a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
- b. The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the City's prior written approval of the subcontractors. The City will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by a Federal Agency or the Secretary of Labor, United States Department of Labor, to receive an award of such subcontract.

3. Breach of Contract

The City may, subject to the Force Majeure provisions below and in addition to its other rights under the Contract, declare the Contractor in breach of the Contract by written notice thereof to the Contractor, and terminate the Contract in whole or in part, in accordance with Section 4, Termination, for reasons including but not limited to any of the following:

- a. Failure to begin the Work within the time specified in the Contract;
- b. Failure to perform the Work with sufficient labor, equipment, or material to insure the completion of the specified Work in accordance with the Contract terms;
- c. Unsatisfactory performance of the Work;
- d. Failure or refusal to remove material, or remove and replace any Work rejected as defective or unsatisfactory;
- e. Discontinuance of the Work without approval;
- f. Failure to resume the Work, which has been discontinued, within a reasonable time after notice to do so;
- g. Insolvency or bankruptcy;
- h. Failure to protect, to repair, or to make good any damage or injury to property;
- i. Breach of any provision of the Contract;
- j. Misrepresentations made in the Contractor's bid/proposal; or
- k. Failure to comply with applicable industry standards, customs, and practice.

4. Termination

If the Contractor is in breach of the Contract, the City, by written notice to the Contractor, may terminate the Contractor's right to proceed with the Work. Upon such termination, the City may take over the Work and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any additional cost incurred by the City in its completion of the Work and they shall also be liable to the City for liquidated damages for any delay in the completion of the Work as provided below. If the Contractor's right to proceed is terminated, the City may take possession of and utilize in completing the Work such materials, tools, equipment, and plant as may be on the site of the Work and necessary therefore.

City shall have the right to terminate this contract immediately without other cause in the event that all or a portion of the funds that the City intends to use to fund its obligations under the contract have their source with the State or Federal government or any agency thereof and said source reduces or eliminates their obligation to provide some or all of the funds previously committed by it to fund City's payment obligations under the Contract. The City

agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date.

Notwithstanding anything herein to the contrary, the City may terminate this Contract at any time upon written notice given by the City (for any reason, including the convenience of the City) to the Contractor at least thirty (30) days prior to the effective date of the termination of this Contract. The City agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date of the termination provided that Contractor has not committed a breach of this Contract. Nothing contained in this section shall prevent either party from pursuing or collecting any damages to which it may be entitled by law.

5. Force Majeure.

The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the Work due to any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency; any acts of the City; causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in their performance of some other contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; nor to any delay of any Subcontractor occasioned by any of the causes specified above. The Contractor shall promptly notify the City in writing within ten (10) days of the delay. Upon receipt of such notification, the City shall ascertain the facts and the cause of the delay. If, upon the basis of facts and the terms of the Contract, the delay is properly excusable, the City shall extend the time for completing the Work for a period of time commensurate with the period of excusable delay.

6. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Per 2 CFR 200.321, prime contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms (collectively referred to as socioeconomic firms) are used when possible. The affirmative steps must include:

- a. Placing qualified socioeconomic firms on solicitation lists;
- b. Assuring that socioeconomic firms are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by socioeconomic firms;
- d. Establishing delivery schedules, where the requirements permit, which encourage participation by socioeconomic firms; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7. Rights to Inventions Made Under a Contractor Agreement.

For any contracts involving the "substitution of parties, assignment or performance of experimental, developmental, or research work", Contractor shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

8. Clean Air Act and Federal Water Pollution Control Act

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Contractor agrees to include this provision in any subcontract exceeding \$150,000 that is financed in whole or in part with Federal funds.

9. Energy Standards.

Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

10. Suspension and Debarment.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

11. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors must certify that that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.

12. Procurement of Recovered Materials.

In the performance of this contract, the Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. This shall include making maximum use of products containing recovered materials as designated by the Environmental Protection Agency (EPA) unless (i) the materials cannot be acquired competitively and within the timeframe required by the contract performance schedule; (ii) the materials designated by the EPA do not meet contract performance requirements; or (iii) the materials cannot be acquired for a reasonable price. Information about this requirement, along with the list of EPA - designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

13. Changes. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

14. Access to Records. The following access to records requirements apply to this contract:

- a. The contractor agrees to provide The City of Duluth, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."

15. DHS Seal, Logo, and Flags. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

16. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

17. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

18. Program Fraud and False or Fraudulent Statements or Related Acts. The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned, [Company] _____ certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, [Company] _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date