



**CITY OF DULUTH**  
**REQUEST FOR PROPOSALS FOR**  
**ENGINEERING SERVICES FOR IRVING PARK BIO-FILTRATION BASIN**

**RFP NUMBER 2023-990029**

**ISSUED JANUARY 6, 2023**

**Engineering Project # 2118**

**PROPOSALS DUE JANUARY 27, 2023 BY 3:00 PM 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 is seeking a consultant to provide engineering services and construction administration for a green stormwater infrastructure project in Duluth, utilizing funds from the Great Lakes Sediment and Nutrient Reduction Program (GLSNRP). The project location is located in Irving Park off N 57<sup>th</sup> Ave W. Construction of the project will be bid in Spring 2024 and constructed Summer of 2024.

Due to the funding source, supplemental provisions attached as Appendix C shall apply. In addition, proposers must complete the Byrd Anti-Lobbying form in Appendix C and return it with the proposal. Additional Federal Requirements from the grant agreement are attached as Appendix D. Please note that the “Grantee” in Appendix D is the City of Duluth; the successful proposer will be awarded a subcontract under the grant.

Additional detail is provided in **Part IV** of this RFP.

**I-2. Background.** The City of Duluth was recently awarded grant dollars from GLSNRP through the Great Lakes Commission. The funding is meant to offset the costs associated with the design and construction of a high-visibility green stormwater infrastructure project in the City of Duluth. The project is meant to aid in the removal of sediment and nutrients prior to their discharge to Keene Creek Trout Stream, St. Louis River Estuary, and Lake Superior, while incorporating an educational component highlighting the practice.

Keene Creek is currently impaired due to excess levels of bacteria. Previous studies have identified stormwater treatment as a necessary implementation practice to combat the increased levels of bacteria present in urban stormwater runoff. Research shows that bio-filtration basins, amended with bio-char in their filter media, may facilitate the removal of bacteria from stormwater. The project design is also expected to meet proposed performance standards for the removal of phosphorus and sediment as part of GLSNRP program requirements.

Furthermore, another study identified suitable locations for the installation of large-scale stormwater treatment practices in the watershed. The referenced project location was identified as part of this study, and preliminary review shows it as a feasible location to divert approximately 17 acres of urban stormwater runoff for treatment.

**I-3. Calendar of Events.** The City will make every effort to adhere to the following schedule (all times are Central Time):

| Activity                | Date                                |
|-------------------------|-------------------------------------|
| Pre-proposal Conference | Jan 17 <sup>th</sup> , 2023 at 10AM |

|                                                                                  |                                 |
|----------------------------------------------------------------------------------|---------------------------------|
| Deadline to submit Questions via email to purchasing@duluthmn.gov                | Jan 20 <sup>th</sup> , 2023     |
| Answers to questions will be posted to the City website no later than this date. | Jan 24 <sup>th</sup> , 2023     |
| Proposals must be received in the Purchasing Office by 3:00 PM on this date.     | Jan 27 <sup>th</sup> , 2023     |
| Selections Complete                                                              | Feb 3 <sup>rd</sup> , 2023      |
| Council Approval                                                                 | Feb 13 <sup>th</sup> , 2023     |
| Issue Notice to Proceed                                                          | Feb 15 <sup>th</sup> , 2023     |
| Plans and Specification Complete                                                 | January 12 <sup>th</sup> , 2024 |
| Advertise for Bids                                                               | February 2024                   |
| Receive Bids                                                                     | March 2024                      |
| Start Construction                                                               | Summer 2024                     |
| Complete Construction                                                            | September 2024                  |

**I-4. 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 Bidder incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

**I-5. Pre-proposal Conference.** The City will hold a pre-proposal conference as specified in the Calendar of Events. Interested Bidders may attend a pre-proposal conference at Duluth City Hall, 411 West 1<sup>st</sup> Street, Conference Room 155, Duluth, MN 55802. Alternatively, Bidders may attend virtually via Webex by clicking this link: <https://duluthmn.webex.com/meet/rgranlund>. Contact Ryan Granlund at 218-730-4088 or [rgranlund@duluthmn.gov](mailto:rgranlund@duluthmn.gov) with questions. Attendance of the pre-proposal conference is not mandatory.

**I-6. Questions & Answers.** Any questions regarding this RFP must be submitted by e-mail to the Purchasing Office at [purchasing@duluthmn.gov](mailto: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-7. 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 <http://www.duluthmn.gov/purchasing/bids-request-for-proposals/> . Although an e-mail notification will be sent, it is the Bidder's responsibility to periodically check the website for any new information

**I-8. 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. 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 60 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 must be in a separate sealed envelope.** In addition, Bidders 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-9.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://mnucep.metc.state.mn.us/> .

**I-10. Award.** The agreement award will be based on the time and materials submitted in the proposal, but will be a lump-sum, not-to-exceed agreement.

**I-11. Term of Contract.** The term of the contract will begin once the contract is fully executed and is anticipated to end by December 2024. The selected Bidder shall not start the performance of any work nor shall the City be liable to pay the selected Bidder for any service or work performed or expenses incurred before the contract is executed.

**I-12. Prompt Payment of Subconsultants.** Per MN Statute 471.425, Subd. 4a., Each contract of a municipality must require the prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the

subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**I-13. Mandatory Disclosures.** By submitting a proposal, each Bidder understands, represents, and acknowledges that:

- A. Their proposal has been developed by the Bidder 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 Bidder or its employees or agents to any person not an employee or agent of the Bidder.
- B. There is no conflict of interest. A conflict of interest exists if a Bidder 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-14. Notification of Selection.** Bidders whose proposals are not selected will be notified in writing.

## **PART II - PROPOSAL REQUIREMENTS**

### **Qualification Proposal Requirements**

To be considered, hard copies of proposals must arrive at the City on or before the time and date specified in the RFP. **Include RFP 23-99029 on the outside of any envelope the City will receive.** The proposal shall be submitted in the following format broken into the 5 sections identified below. Proposals not following the specified format will not be reviewed. No additional sections or appendices are allowed. The proposal shall be limited to 20 pages plus a cover letter (The page limit includes all resumes. Proposals

that exceed this limit will not be reviewed. Dividers, covers, and any addenda included as acknowledgement are not included in the page limitation.) The proposal format shall be as follows:

1. Goals and Objectives
  - a. A restatement of the goals and objectives and the project tasks to demonstrate the responder's view and understanding of the project.
2. Experience
  - a. An outline of the responder's background and experience with similar projects. Project descriptions shall include a list of key staff and their role.
  - b. Consultants should include projects where there is the previous use and design of nature-based stormwater treatment systems to remove bacteria, sediment and nutrients.
3. Personnel
  - a. Identify personnel to conduct the project and detail their training and work experience. Identify how personnel proposed for this project were involved with the projects listed as experience.
  - b. Identify a professional engineer registered in the State of Minnesota who will oversee the overall project.
  - c. No change in personnel assigned to the project will be permitted without approval of the City.
4. Work Plan
  - a. Include a detailed work plan identifying the work tasks to be accomplished and the budget hours to be expended on each task and subtask.
  - b. The work plan shall also identify the deliverables at key milestones in the project as well as any other services to be provided by the City.
  - c. **Do NOT** include any costs in the work plan.
5. Work Schedule
  - a. An anticipated work schedule shall also be provided. The work schedule shall identify all key milestone dates.
6. Byrd Anti-Lobbying Form
  - a. A completed Byrd Anti-Lobbying Form, included in Appendix C.

### **Cost Proposal Contents**

Provide, in a separate SEALED envelope, one copy of the cost proposal, clearly marked on the outside "Cost Proposal" along with the responder's official business name and address. Terms of the proposal as stated must be valid for the project length of time.

For each proposal, the consultant must include a not-to-exceed total project cost, as well as subtotals for design services and bidding and any sub consultant fees. The cost proposal shall include all of the following:

- A cover/transmittal letter
- A breakdown of the hours by task for each employee. This shall be in the same

format as the work plan in the Qualifications proposal with the addition of costs.

- Hourly rates for each specific employee proposed (not general rates by category).
- Identification of anticipated direct expenses and rates for miscellaneous charges such as mileage and copies.
- Identification of any assumption made while developing this cost proposal.
- Identification of any cost information related to additional services or tasks. Include this in the cost proposal, but identify it as additional costs and do not make it part of the total project cost.
- The Consultant must have the cost proposal/cover letter/transmittal signed in ink by a member of the firm authorized to bind the company into a contract, and the attached Appendix A completed.
- **The consultant must not include any cost information within the body of the RFP qualification proposal response.**

### **PART III - CRITERIA FOR SELECTION**

The proposals will be reviewed by City Staff. 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:

|                      |     |
|----------------------|-----|
| Goals and Objectives | 10% |
| Experience           | 20% |
| Personnel            | 20% |
| Work Plan            | 30% |
| Cost                 | 20% |

Proposals will be evaluated on a best value basis with 80% Qualifications and 20% cost consideration. The review committee will not open the cost proposal until after the qualification points have been awarded. Cost proposals will only be opened for the three top ranked firms.

### **PART IV – PROJECT DETAIL**

#### **General Project Scope**

The Bidder shall review the attached Exhibit: B Localized Project Location – Irving Park

The City of Duluth is seeking engineering services to facilitate the construction of a bio-filtration basin in Irving Park, near N 57<sup>th</sup> Ave W, that will treat diverted stormwater

flows. The proposed project includes construction of a new storm sewer and associated diversion structure under N 57<sup>th</sup> Ave W to convey a portion of stormwater flows to a new bio-filtration basin. The bio-filtration basin will include pre-treatment for sediment removal and a soil media that focuses on the removal of bacteria and nutrients from stormwater flows. The basin will include underdrains to convey treated stormwater flows to Keene Creek, a trout stream. The basin design shall focus on pollutant removal for water quality improvement. The basin will be vegetated with native grasses and forbs and shall include a public engagement/education component to highlight the project.

Consulting engineering services are expected to include all work necessary to provide final design, including plans and specifications, bidding services, construction administration and construction inspection. This may include but is not limited to the following:

1. Project initiation, site visits and other meetings as necessary with City Engineering staff.
2. Public participation/outreach
3. Preliminary surveys, information gathering, evaluation of existing conditions, preliminary engineering design.
4. Production of Construction Plans and Specifications (Special Provisions).
5. Bid and Construction assistance.

All work shall be performed in accordance with the most recent version of the City Standard Specifications and Engineering Guidelines (both are available on the City of Duluth website at <https://duluthmn.gov/engineering/>)

## **Project Scope Details**

1. Initial Site Visit and Consultations
  - a. The consultant shall meet with City of Duluth representatives to review project scope and complexity, design criteria, and related requirements; view existing conditions; and gather data from City engineering files and previously prepared reports.
  - b. The consultant shall provide documentation of meetings and data provided.
  - c. The consultant shall ascertain the applicability of information provided, review data for completeness, and notify the City of any additional data required.
2. Public Outreach
  - a. The consultant should plan to assist the City with at least one press release highlighting the project and environmental benefit.



- b. The project design shall include signage and/or other built features to spur public engagement and education around the proposed stormwater treatment practice.

### 3. Existing Conditions, Field Survey and Permitting

- a. The consultant shall perform a full topographic survey of the project area as needed for design. The consultant shall perform all necessary preliminary survey of utility systems where needed. The City will provide existing data for utility systems within the project area including 2021 elevation data with 1 ft precision of contours.
- b. The consultant shall be responsible for all permit applications required by the City.
- c. The consultant shall analyze all available records, record drawings, and all other appropriate data, and prepare recommendations and a preliminary construction cost estimate prior to preparing plans and specifications. Each plan review submittal also requires an updated cost estimate.
- d. The consultant shall work with City staff to provide design and cost alternatives to assist the City in meeting the City's desired objectives and budget constraints.
- e. Once the cost estimates are prepared, consultant will meet with the project engineer to select the preferred alternative. Full design can commence following that meeting.
- f. Following the completion of the plans and specifications, a quantity takeoff and a final detailed itemized construction cost estimate for the entire complete project shall be provided. The Engineer's Opinion of Construction Cost and the Statement of Estimated Quantities shall be submitted in Excel format as well as pdf.

### 4. Plans and Specifications

- a. The consultant shall prepare construction drawings as necessary to provide for the construction of the stormwater bio-filtration basin and connection to existing stormwater utility system in 57<sup>th</sup> Ave W. These drawings shall include all details, plans and specifications necessary for all work.
- b. The consultant shall plan to include a design criterion that is specifically focused to treat stormwater for elevated levels of bacteria, nutrients and sediment. Special consideration shall be given to the use of bio-char in the soil mediums and the use of native grasses and forbs in the completed project area.
- c. The specification preparation shall also include appropriate sections for bidding, bonding, agreements, general and special provisions, and other appropriate contract provisions as well. These sections shall be developed in accordance with the City standards, which shall be made available to the consultant.

- d. The drawings shall include all necessary site maps, plans, elevations, sections, details, and notes as needed or necessary to adequately show, explain or describe all features of the project.

5. Bid and Construction Assistance

- a. Upon completion of plans and specifications, the consultant shall provide all documents and services to provide for bidding and award for construction. The consultant shall answer any questions brought up during bidding and attend a pre-bid conference. This design phase shall be considered complete upon award of the project following bidding.
- b. Upon completion of plans and specifications, the consultant shall provide all documents and services to provide for construction inspection, and project management.
- c. Construction administration services provided by the Consultant shall include but not be limited to contract management, progress reports, shop drawing review, testing and project management, including the completed record drawings and final records.
- d. The consultant shall provide full-time construction inspection services. The proposal shall be based upon an anticipated construction period to begin during the summer of 2024 and end September of 2024.

**APPENDICES**

Appendix A Proposal Cover Sheet

Appendix B Localized Project Location

Appendix C Federal Supplementary Provisions, including Byrd Anti-Lobbying Certificate

Appendix D Federal Requirements as identified in Appendix D of Contract 24396 Great Lakes Sediment and Nutrient Reduction Program, Project Number GLSNRP-12-05

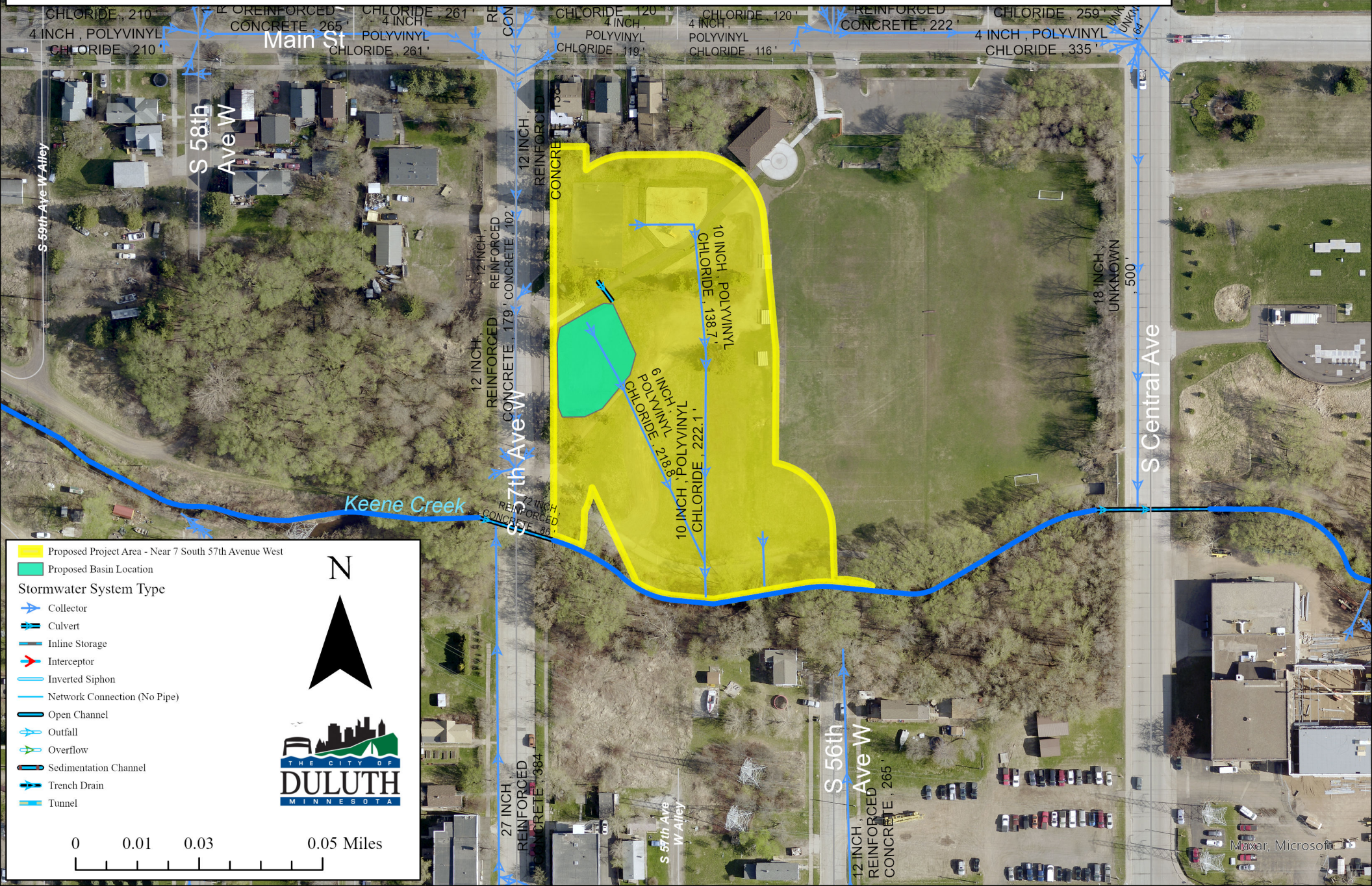
**APPENDIX A - PROPOSAL COVER SHEET  
CITY OF DULUTH  
RFP# 23-99029**

| <b>Bidder Information:</b>        |  |
|-----------------------------------|--|
| Bidder Name                       |  |
| Mailing Address                   |  |
| Contact Person                    |  |
| Contact Person's Phone Number     |  |
| Contact Person's E-Mail Address   |  |
| Federal ID Number                 |  |
| Authorized Signature              |  |
| Name & Title of Authorized Signer |  |
| Email of Authorized Signer        |  |

**APPENDIX B – LOCALIZED PROJECT LOCATION – IRVING PARK  
CITY OF DULUTH  
RFP# 23-99029**



General Work Area of Proposed Biofiltration Basin - As Geospatially Identified (Keene Creek Resiliency Report, p. 14)  
 Application to Great Lakes Sediment and Nutrient Reduction Program  
 Existing Stormwater Conveyance Systems Overlaid  
 Proposed Basin Location Included  
 Near 7 South 57th Avenue West - Irving Park  
 City of Duluth, Minnesota



Proposed Project Area - Near 7 South 57th Avenue West  
 Proposed Basin Location

**Stormwater System Type**

- Collector
- Culvert
- Inline Storage
- Interceptor
- Inverted Siphon
- Network Connection (No Pipe)
- Open Channel
- Outfall
- Overflow
- Sedimentation Channel
- Trench Drain
- Tunnel

N

0    0.01    0.03    0.05 Miles



**APPENDIX C – SUPPLEMENTARY PROVISIONS & BYRD ANTI-LOBBYING FORM  
CITY OF DULUTH  
RFP# 23-99029**

City of Duluth  
Supplementary Provisions – State & Federal Funding  
23-99029 RFP for Engineering Svcs for Irving Park Biofiltration Basin

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. 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.

8. 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).

9. 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. A contract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM.gov), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 19898 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

10. 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.

11. 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> .

#### 12. Telecommunications and Video Surveillance Services or Equipment

In the performance of this contract, Contractor/Supplier shall comply with Public Law 115-232, Section 889, which prohibits the procurement or use of covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, use of video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) is prohibited.

In addition, telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country is prohibited.

#### 13. Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, Contractor shall, to the greatest extent practicable under a Federal award, supply and/or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section, "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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

**APPENDIX D – FEDERAL REQUIREMENTS PER APPENDIX D OF CONTRACT  
24396 GREAT LAKES SEDIMENT AND NUTRIENT REDUCTION PROGRAM,  
PROJECT NUMBER GLSNRP-12-05  
CITY OF DULUTH  
RFP# 23-99029**

## Appendix D- Federal Requirements

### I. FEDERALLY FUNDED PROJECT REPORTING REQUIREMENTS

The Catalog of Federal Domestic Assistance (CFDA) title associated with this Project is Soil and Water Conservation and the CFDA number is 10.902. The federal award number is NR213A750013C001 and this grant is funded with Federal funds from the USDA-NRCS. By accepting this Contract, the Grantee agrees to comply with the requirements of the above-referenced agreement (attached as Appendix E), including, but not limited to, the specific requirements described below.

### II. APPLICABLE REGULATIONS

(A) The Grantee, and recipients of any subawards or subcontracts under this grant, agree to comply with the following regulations, as applicable. (The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov>.)

1. 2 CFR Part 25, "Universal Identifier and System of Award Management"
2. 2 CFR Part 170, "Reporting Subaward and Executive Compensation Information"
3. 2 CFR Part 175, "Award Term for Trafficking in Persons"
4. 2 CFR Part 180, "OMB Guidelines To Agencies On Governmentwide Debarment And Suspension (Nonprocurement)"
5. 2 CFR Part 182, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)"
6. 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
7. 2 CFR Part 400, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
8. 2 CFR Part 417, "Nonprocurement Debarment and Suspension"
9. 2 CFR Part 418, "New Restrictions on Lobbying"
10. 2 CFR Part 421, "Requirements for a Drug-Free Workplan (Financial Assistance)"
11. 2 CFR Part 422, "Research Institutions Conducting USDA-Funded Extramural Research; Research Misconduct"

(C) Allowable Project costs will be determined in accordance with the authorizing statute, the purpose of the award, and to the extent applicable to the type of organizations receiving the grant, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. (The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov>.)

1. 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles And Audit Requirements For Federal Awards"

## Appendix D- Federal Requirements

2. 48 CFR Part 31, "Contract Cost Principles and Procedures"

### III. UNALLOWABLE COSTS

The following costs are not allowed:

- (A) Costs above the amount authorized for the Project;
- (B) Costs incurred after the Project End Date denoted on page one of the Contract including any no-cost extensions of time;
- (C) Costs that lie outside the scope of the approved Project and any amendments thereto;
- (D) Profit resulting from Federal financial assistance. Grantees may not earn and keep income resulting from an award.
- (E) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
- (F) Compensation for injuries to persons or damage to property arising from Project activities.

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, "Subpart E – Cost Principles," or direct specific inquiries to the Commission's Point of Contact.

### IV. FAIR LABOR STANDARDS

The Grantee assures and certifies that it shall comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.

### V. PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

- (A) Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.
- (B) In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to:

Farm Production and Conservation Business Center  
Grants and Acquisitions Division  
1400 Independence Avenue, SW  
Room 6819 South Building  
Washington, DC 20250

- (C) USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.
- (D) The following acknowledgement of USDA-NRCS support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (World Wide

## Appendix D- Federal Requirements

Web pages, computer programs, etc.) that is substantially based upon or developed under this grant:

**“This material is based upon work supported by the Natural Resources Conservation Service, U.S. Department of Agriculture, under number NR213A750013C001”**

In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

“Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services.”

- (E) All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA home page. If the material is too small to permit the full nondiscrimination statement to be included, the material must, at a minimum, include the statement:

“USDA is an equal opportunity provider and employer.”

Any publication prepared with funding from this agreement must include acknowledgement to USDA, Natural Resources Conservation Service.

The Grantee is responsible for ensuring that an acknowledgment of USDA-NRCS is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss work funded by this grant in a substantial way.

### **VI. PROGRAM INCOME**

All potential program income must be reported to the Commission Point of Contact. Program income is the gross revenue generated by a Federally funded activity earned during the performance period of the award. Program income may be earned by recipients from fees charged for conference or workshop attendance, from rental fees earned from real property or equipment acquired with Federal funds, or from the sale of commodities or items developed under the grant or cooperative agreement. It must fall within the guidelines at 2 CFR 200.307. Unless identified and addressed in the award, the recipient must provide notification to the administrative contact and request the manner it would like to treat the income (i.e., deductive or additive). Program income may be used to meet recipient cost-share requirements with the approval of the Government.

### **VII. NONEXPENDABLE EQUIPMENT**

If the Grantee has been approved to purchase equipment or products with funds provided under this grant, the Grantee is encouraged to purchase only American-made equipment and products. Title to nonexpendable equipment purchased with grant funds will vest in the Grantee upon completion of the Project and acceptance by the Commission and USDA-NRCS of required final reports. When equipment is no longer needed by the Grantee and the per-unit fair market value is less than \$5,000, the Grantee may retain, sell, or dispose of the equipment with no further obligation to the Commission or USDA-NRCS. However, if the per-unit fair market value is \$5,000 or more, the Grantee must submit a written request to the Commission for disposition instructions.

### **VIII. PRIVACY ACT AND PROHIBITION AGAINST CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS**

## Appendix D- Federal Requirements

- (A) Activities performed under this grant may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term “confidential information” means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of USDA-NRCS, which may be sought by first providing written notice to the Commission Point of Contact.
- (B) The Grantee’s personnel shall follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The Grantee’s personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).
- (C) The Grantee agrees to comply with the “Prohibition Against Certain Internal Confidentiality Agreements:” Grantees may not require employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

### **IX. ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE**

The Grantee agrees to comply with USDA-NRCS guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110-246), 7 U.S.C. 8791 as described below.

#### a. Responsibilities.

1. Acceptance of this award indicates acknowledgment and understanding that the Grantee, along with every owner, manager, supervisor, employee, contractor, agent, and representative of the Grantee, is legally bound by Federal statute to comply with the provisions of Section 1619 and that the Grantee will not subsequently disclose information protected by section 1619 other than to meet Commission reporting requirements or engage with other project partners identified within Appendix A. Any other disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The Grantee will be held responsible should disclosure of the protected information occur.
2. The Grantee will use the protected information only to perform work that is directly connected to this award. Use of the protected information to perform work that is not directly connected to this award is expressly prohibited. Use of the protected information for any purpose is expressly prohibited after the period of performance end date of this award.
3. The Grantee must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information to perform work under this award.
4. The provisions in Section 1619 are continuing obligations. Even when the Grantee is no longer a Grantee, or when individuals currently affiliated with the Grantee become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with these provisions.
5. Subsequent to the Grantee’s receipt of a Final Close-Out Letter from the Commission, any protected information provided under this award must be immediately destroyed or returned to the Commission for transfer to USDA-NRCS custodians. Grantees should maintain written documentation that the protected information (paper copy, electronic copy, or both) was properly destroyed, removed from any electronic



## Appendix D- Federal Requirements

storage media, or both and make such documentation available to the Commission or USDA-NRCS upon request.

6. Any State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

b. Examples of protected information prohibited by disclosure under Section 1619 include, but are not limited to, the following:

- i. State identification and county number (where reported and where located).
- ii. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
- iii. Farm, tract, field, and contract numbers.
- iv. Production shares and share of acres for each Farm Serial Number (FSN) field.
- v. Acreage information, including crop codes.
- vi. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
- vii. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
- viii. Location of conservation practices.