



Purchasing Division
Finance Department

Room 120
411 West First Street
Duluth, Minnesota 55802

218-730-5340

purchasing@duluthmn.gov

INVITATION TO BID TREE GROWING CONTRACT

BID NUMBER: 23-AA05

BID DEADLINE: Thursday, April 27, 2023 AT 2:00 PM

PROJECT DESCRIPTION: Provide trees in the quantities, sizes and varieties listed to the City of Duluth every spring for five years.

PRE-BID MEETING: A virtual pre-bid meeting will be held via Webex on Thursday, April 20, at 10:00 am central time. Interested bidders are encouraged to attend and can find the link at <https://www.duluthmn.gov/purchasing/bids-request-for-proposals/>.

QUESTIONS: Please submit any questions regarding this project via e-mail to purchasing@duluthmn.gov. Responses will be issued as an addendum to this solicitation.

See attached general bid specifications, scope of work, tree specification summary, bid form, list of Latin names and variety for each bid item, and draft agreement.

The awarded bidder will be issued a service agreement, a copy of which is included in this bid package.

INSTRUCTIONS TO BIDDERS

Paper bids must be complete, signed, and transmitted in a sealed envelope plainly marked with the bid number, subject matter, and opening date.

Bids may be mailed to the Purchasing Office, City Hall, 411 West 1st Street, Room 120, Duluth, MN 55802 or dropped off in person at the same address.

The City Purchasing Agent or her designee will conduct a public bid opening immediately following the bid deadline. Bidders can visit <https://www.duluthmn.gov/purchasing/bids-request-for-proposals/> and select the appropriate link to view the bid opening. A bid summary will be posted to the same website under the solicitation.

No alternatives to the specification will be considered unless specifically requested. Erasures or other changes to the bid must be initialed and dated, however no special conditions shall be made or included in the bid form by the bidder.

The City of Duluth reserves the right to split the award where there is a substantial savings to the City, to waive informalities and to reject any and all bids. Price may not be the only consideration for bid award. Bids must be firm for a minimum of 60 days.

The following item must be submitted WITH your bid.

Acknowledgment of Addendum – any changes to this solicitation will be announced via Addendum. Bidders must indicate that they have reviewed any addendum(s) by initialing and dating on the bid form where indicated. ***Failure to acknowledge addenda may result in your bid being deemed non-responsive.***



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The following documents may be submitted after the bid deadline but are required prior to execution of the agreement.

- 1. Insurance** – Awarded bidder must provide proof of insurance as required by Section 5 of the draft agreement attached.
- 2. Declaration of Non-Collusion** – The successful bidder shall be required to execute the attached declaration stating that the bidder has not entered into a collusive agreement with any other person, firm, or corporation in regard to any bid submitted.
- 3. Affirmative Action/EEO** - The awarded bidder must take affirmative action to ensure that the employees and applicants for employment are not discriminated against because of their race, color, creed, sex or national origin, and must meet the affirmative action goals. Awarded bidders are encouraged to subcontract with Disadvantaged Business Enterprises (DBEs) when possible. A current list of certified DBEs is available on the Minnesota Unified Certification website at <https://mnucp.metc.state.mn.us/>. Awarded bidder will comply with all applicable Equal Employment Opportunity laws and regulations. Awarded bidder will submit the attached Equal Employment Opportunity (EEO) Affirmative Action Policy Statement & Compliance Certificate.

The City of Duluth is an Equal Opportunity Employer. Contractor shall comply with all applicable Equal Employment Opportunity laws and regulations.

CITY OF DULUTH

Patrice Stalvig
Purchasing Agent



GENERAL BID SPECIFICATIONS

Purchasing Division
120 City Hall, 411 W. 1st Street
Duluth, MN 55802-1189
TEL. 218-730-5340
purchasing@duluthmn.gov

1. General. This document covers quotes or bids requested by the City of Duluth ("City"), including those requested on behalf of its Agents and Authorities. Each authority may issue their own purchase order or contract and will be responsible for it. The City of Duluth Authorities are as follows:
 - a. Duluth Airport Authority
 - b. Spirit Mountain Recreational Area Authority
 - c. Duluth Entertainment and Convention Center
 - d. Duluth Transit Authority
 - e. Duluth Economic Development Authority
 - f. Duluth Housing and Redevelopment Authority
2. Investigation by Bidders. Bidders are responsible for thoroughly reading and understanding the information, instructions, and specifications contained in this Invitation for Bids, and for investigating the site conditions at the Project location(s), if applicable. At the time of the opening of bids, each bidder will be presumed to have read and to be thoroughly familiar with the plans, specifications and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve the bidder from any obligation in respect to their bid.
3. Bidder Questions. Responses to general questions regarding the Invitation for Bids may be made at the discretion of the City. Every request for such interpretation should be in writing and delivered via e-mail or postal mail to the Purchasing Division before the deadline indicated on the Invitation for Bids, or if no deadline is specified, at least five (5) days prior to the scheduled bid opening. Responses will be issued in writing in the form of an Addenda or e-mail to prospective bidders.
4. Changes, Corrections & Withdrawal of Bids. Erasures or other changes to the bid must be initialed and dated, however no special conditions shall be made or included in the bid form by the bidder. Bidders may make requests to withdraw/replace their bids by notifying the Purchasing Division in writing prior to the bid opening date and time.
5. Unit Pricing. If the total bid price is based on unit pricing, the City will verify the extended bid price for each item (obtained by multiplying the unit bid price by the bid item quantity). If any item is incorrectly calculated, the City will use the unit bid price to recalculate the extended item price and the total bid price.
6. Sales Tax. Do not include sales tax in the unit price. A sales tax exemption certificate will be provided upon request.
7. Bid/Quote Submission. Bids may be mailed to the Purchasing Office, City Hall, 411 West 1st Street, Room 120, Duluth, MN 55802, or dropped off in person at the same address. Bids must be received by Purchasing before the time and date specified in the invitation for bid.
8. Non-Collusion Clause. By submitting a bid, the bidder, their agent and/or employee(s) hereby affirm that the attached bid or bids have been arrived at by the bidder independently and have been submitted without collusion with, and without agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment or services described in the Invitation for Bids, designed to limit independent bidding or competition.
9. Award. Award, if made, will be to the responsible bidder submitting the lowest bid which complies with the conditions of the Invitation for Bids and specifications.
10. Bidder Qualifications. Per Sec 41.23(e) of Duluth City Code, price may not be the only consideration for award. The City will make such investigations as deemed necessary to determine the ability, capacity and skill of the bidder to perform the work and perform it in the time specified without delay or interference, the character, integrity, reputation, judgment, experience and efficiency of the bidder, the quality of the bidder's performance of previous contracts or services, and the sufficiency of the financial resources, equipment available and ability of the bidder to perform the contract. Bidders shall furnish to the City all such information and data for this purpose, when requested.

Minnesota law requires that, in order to transact business in the State, including submitting a response to this request for bids/proposals, a corporate entity of any kind must either be organized under Minnesota law or have a Certificate of Authority from the Minnesota Secretary of State to do business in Minnesota (M.S. 303.03). By submitting this bid/proposal as a corporation, you are certifying that the responding corporation complies with this requirement.
11. Rejection of Bids. The City of Duluth reserves the right to reject any and all bids and to waive any informalities or irregularities in bids received whenever such rejection or waiver is in its best interests.

The City reserves the right to reject any bid if the evidence obtained by the City through such investigation fails to satisfy the City that the bidder is properly qualified to carry out the obligations of the contract and to complete the work as required by the plans and specifications.
12. Liquidated Damages for Failure to Enter into Contract. The successful bidder, upon their failure or refusal to accept a purchase order or execute and deliver the contract, proof of insurance and bonds required within 10 days after receipt of a notice of the acceptance of their bid, shall forfeit to the City, as liquidated damages for such failure or refusal, the security deposited with their bid (if required).
13. Equal Employment Opportunity. Contractor will be required to comply with all applicable Equal Employment Opportunity (EEO) laws and regulations. Affirmative action must be taken to insure that the employees and applicants for employment are not discriminated against because of their race, color, creed, sex or national origin. The City of Duluth is an equal opportunity employer.
14. Quantities. The City reserves the right to increase or decrease the quantities of items within reason, unless otherwise noted.
15. Prevailing Wages. Per Sec 2-26 of Duluth City Code, payment of not less than the prevailing wage and salary rates specified in the contract documents and the conditions of employment with respect to certain categories and classifications of employees is required for all construction type projects estimated to exceed \$2,000. This does not apply to off-site production and manufacturing of parts and supplies.
16. Validity of Bids. All bids must remain firm for 60 days from the date of bid opening, unless another period is noted in bid documents or if an extension is agreed upon, in writing prior to the end of the 60-day period.
17. Insurance. All vendors doing work on City property, except vendors making routine deliveries, shall submit an insurance certificate verifying insurance coverage as per current City requirements.
18. Reports. Contractors will be required to provide all data required by the city, state or federal funding source(s) for reporting purposes; including, but not limited to job creation and retention data, itemized invoices, payroll records, certifications and licenses.

Scope: Provide trees in the quantities, sizes, and varieties listed to the City of Duluth every spring for five years starting in year one as identified by the bidder). During year four, an optional two-year extension may be awarded. If awarded, during year six, another optional two-year extension may be awarded. Total contract length of time could be up to nine years.

Substitutions, crop failures. Substitutions will not be accepted. If contractor fails to provide material in a given year due to force majeure, contractor may make up the difference the following year, provided the price is the same as that quoted for the year the material should have originally been provided. Repeated failures to provide materials may result in termination of the agreement.

TREE SPECIFICATION SUMMARY

All trees shall conform to the American Associations of Nurserymen's Standards for Nursery Stock (most current edition) ANSIZ Z60. The trees shall be:

1. Healthy and free of insects and disease.
2. Free of bark injuries on their trunk and limbs, both before and upon delivery.
3. The stem will be a single stem, straight with a single leader trunk and have the minimum required height with branching as specified.
4. The crown of the tree shall be in good balance with the trunk. The form and shape of the crown shall be consistent with the species. Poorly balanced and misshapen trees will not be accepted.
5. The trunk or stem shall be located in the center of the container with a maximum deviation of 10% of the diameter.
6. The root flare of the tree shall be at the top of the container and shall not be buried in dirt or other matter.
7. The City reserves the right to choose all trees to be provided under the terms of this contract by tagging at the nursery by the Purchaser between July 15 and September 15 the year preceding delivery.
8. Roots shall be protected from drying out.
9. During transportation to the City, the Bidder shall exercise care to prevent injury to the trees. The City may, upon inspection, reject any injured tree(s) and require the Bidder to replace the tree(s) at no additional cost to the City within ten (10) working days after notification to the Bidder.
10. The Bidder shall supply a certificate of origin prior to acceptance of any trees under this contract.

Container Type: Preference will be given to those bids that specify an air or root pruning pot or bag (Air pot, RootMaker, etc.), fabric bag, or other non-plastic container. Bidders must indicate in the bid form the container type to be used.

Height of branching: All deciduous trees will be pruned to have the bottom 1' of stem clear of branches, conifers will have the bottom 6" of stem clear of branches.

Sizes: Tree height will, at minimum, meet the measurement for the size class.

Shipping: Shipping should be consolidated into one delivery annually. Bidders must provide estimated shipping costs, if any, on the bid form. For ease of comparison, the cost provided should be based on 2023 prices, even though no order will be delivered in 2023. Delivery terms are FOB destination, freight prepaid and add. The successful bidder will arrange transport and bill the City actual shipping charges, if any. Documentation to substantiate charges may be requested. Delivery will be to 110 N. 42nd Avenue West, Duluth, MN 55807.

BID FORM
BID 23-AA05 TREE GROWING CONTRACT

| ITEM (enter the total cost for each year – this number must match the total column from the itemized bid list) | PRICE |
|---|--------------|
| Year 1 | |
| Year 2 | |
| Year 3 | |
| Year 4 | |
| Year 5 | |
| TOTAL | \$ |

TOTAL BASE PRICE IN WRITING

| | |
|--------------------------------|----|
| ESTIMATED ANNUAL SHIPPING COST | \$ |
|--------------------------------|----|

ACKNOWLEDGMENT OF ADDENDA

ADDENDUM # INITIAL/DATE

ADDENDUM # INITIAL/DATE

Signature _____ Date _____

Name/Title _____

Company Name _____

Address _____

City, State, Zip _____

Tel. _____ E-Mail _____

If your organization is certified as a Disadvantaged Business Enterprise, please check here: ☐

City of Duluth Solicitation 23-AA05
Contracted Tree Growing

Company Name:

Calendar year for first full order:

Identify container type:

Size Class A = minimum 3' tall, #7 pot
Size Class C = 5' tall, #10 pot, lightly branched
Size Class D = 6' tall, #10 pot, lightly branched

| | | Annual Order | | Year 1 | | Year 2 | | Year 3 | | Year 4 | | Year 5 | |
|-------------------|--------------------|--------------|-----|------------|-------|------------|-------|------------|-------|------------|-------|------------|-------|
| Item | Species | Size Class | Qty | Unit Price | Total | Unit Price | Total | Unit Price | Total | Unit Price | Total | Unit Price | Total |
| DECIDUOUS SPECIES | | | | | | | | | | | | | |
| 1 | Muckle plum | C | 20 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 2 | Magnolia | C | 30 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 3 | Powerline Magnolia | C | 20 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 4 | Sugar Maple | D | 20 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 5 | Ohio Buckeye | C | 30 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 7 | Korean Birch | A | 20 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 9 | Hawthorn | D | 20 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 10 | Flowering pear | D | 20 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 11 | Alder | D | 30 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 12 | Smoketree | C | 20 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| CONIFER SPECIES | | | | | | | | | | | | | |
| 13 | Swiss stone pine | A | 20 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 14 | European larch | A | 20 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| | | | | | | | | | | | | | |
| TOTALS: | | | 270 | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |

LATIN NAMES, VARIETIES AND SOURCES

| <u>Common name</u> | <u>Latin name</u> | <u>Variety</u> |
|---------------------------|----------------------------|---|
| Muckle plum | <i>Prunus x nigrella</i> | Muckle |
| Magnolia | <i>Magnolia</i> spp. | Goldfinch, Red Baron, Yellowbird, Merrill |
| Powerline magnolia | <i>Magnolia</i> spp. | Jane, Susan, Two stones, Betty |
| Sugar maple | <i>Acer saccharinum</i> | Unity |
| Ohio buckeye | <i>Aesculus glabra</i> | Prairie Torch* |
| Korean birch | <i>Betula costata</i> | Cinnamon Curls* |
| Hawthorn | <i>Crataegus laevigata</i> | Crimson Cloud |
| Flowering pear | <i>Pyrus ussuriensis</i> | Prairie Gem* |
| Alder | <i>Alnus hirsuta</i> | Prairie Horizon* |
| Smoketree | <i>Cotinus obovatus</i> | Cotton Candy |
| Swiss stone pine | <i>Pinus cembra</i> | Prairie Statesman* |
| European larch | <i>Larix decidua</i> | No varieties; provide Species |

*NDSU introduction

SOURCES FOR NDSU INTRODUCTION SPECIES:

Cinnamon Curls® Dwarf Korean Birch

(*Betula costata* 'CinnDak')

Agriforest Bio-Technologies, Ltd. – BC, Canada (TC liners)

Iseli Nursery – Oregon

Oregon Pride Nurseries, Inc. – Oregon

Prairie Gem® Flowering Pear

(*Pyrus ussuriensis* 'MorDak')

Apple Creek Propagators – Idaho (liners)

Aubin Nurseries, Ltd. – MB, Canada

J. Frank Schmidt & Son Co. – Oregon

Silver Creek Nurseries – Wisconsin

Prairie Horizon® Manchurian Alder

(*Alnus hirsuta* 'Harbin')

Aubin Nurseries, Ltd. – MB, Canada

Bailey Nurseries, Inc. – Minnesota and Oregon

Gertens – Minnesota

Jeffries Nurseries, Ltd. – MB, Canada

Prairie Statesman® Swiss Stone Pine

(*Pinus cembra* 'Herman')

Gardens Alive! – online mail-order

Iseli Nursery – Oregon

Oregon Pride Nurseries, Inc. – Oregon (liners)

Sester Farms, Inc. – Oregon

Prairie Torch® Hybrid Buckeye

Bylands - Canada

SERVICES AGREEMENT
(Purchase Order #_____)

This agreement ("Agreement") between the City of Duluth, a Minnesota municipal corporation ("City") and **NAME OF SERVICE PROVIDER – Debarment Check?** ("NAME" or "Service Provider"), with offices located at **ADDRESS**.

WHEREAS, City desires to enter into an agreement with a service provider to grow trees of various sizes and species, as determined by City, and deliver the trees to City each year during the Term of this Agreement;

WHEREAS, City issued an Invitation for Bid (the "IFB"), attached and made a part hereof as Exhibit A, specifying the varieties, numbers, standards, and condition of trees that City desires be grown exclusively for sale and delivery to City each year for a minimum period of five (5) consecutive years (the "Services");

WHEREAS, **NAME** is in the business of growing trees and delivering same to its customers;

WHEREAS, **NAME** submitted a Response to the IFB (the "Response"), attached and made a part hereof as Exhibit B, and has represented itself as fully capable of providing the Services to its customers and that it is qualified and willing to perform the services set forth in the IFB;

WHEREAS, based on the Response the City has selected **NAME** as the lowest responsible bidder and wishes to engage **NAME** to provide the Services;

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

City and Service Provider hereby agree to the following terms and conditions:

1. Services. During the Term of this Agreement, service Provider shall provide the following Services:
 - A. Grow trees in the varieties, sizes, and quantities as specified by City in Exhibit A, for purchase exclusively by City, and conforming to the then-current edition of the American Standard for Nursery Stock ANSI Z60.1.
 - B. Have the trees delivered once annually each spring to City in a condition acceptable to City and with a certificate of origin for each tree provided under this Agreement. The date and location of the annual delivery will be determined by City and communicated by City to Service Provider at least thirty (30) days before delivery.
 - C. Permit City access to Provider's nursery at a date and time mutually agreeable to City and Provider each year between July 15 and September 15 to select and tag all trees to be provided the following spring under this Agreement.
 - D. Ensure trees are delivered free from injury and damage and, at no cost to City, replace any trees injured or damaged before or during delivery. Additionally, Service Provider will warrant all trees until fully leafed out, and replace any trees that fail to leaf out at no cost to City.

2. Rates/Price and Payment for Services. The rates (the “Rates”) for the Services are outlined in Exhibit B. The annual estimated amount of this agreement is **dollar amount spelled out (\$)** and the total amount payable under this Agreement shall not exceed **dollar amount spelled out (\$)** unless this Agreement is modified by formal amendment. Payments shall be made **from fund XXX-XXX-XXX**. Each year during the Term of this Agreement, Service Provider shall be paid for the Services within thirty (30) days of the City’s receipt of an invoice and only after delivery of the trees for that year.

3. Term; Termination. The term of this Agreement shall commence on the date of attestation and shall continue, unless earlier terminated as provided for herein, for an initial period of five (5) years (the “Term”). The Term may renew for up to two (2) additional two (2)-year terms (each a “Renewal Term”). Renewal Terms will be negotiated and agreed between City and Service Provider no later than October 1 in year four (4) and, if applicable, year six (6) of this Agreement. Either party may terminate this Agreement at any time prior to the end of the Term or any Renewal Term due to the other party’s material breach of any of its obligations hereunder, which breach has not been cured to the non-breaching party’s reasonable satisfaction within a reasonable time, not to exceed ten (10) business days, after receipt of written notice specifying such breach. In addition, during the Renewal Term of this Agreement, either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.

4. Representations and Warranties. Service Provider represents and warrants that:

- i. Service Provider shall perform its respective duties in a professional and diligent manner in the best interests of City and in compliance with all applicable laws.
- ii. Service Provider and all personnel to be provided by it hereunder have sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.

5. Insurance.

A. Service Provider shall provide and maintain in full force and effect during the life of this Agreement the following minimum amounts of insurance:

- (1) Workers compensation insurance in accordance with applicable law.
- (2) Commercial General and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- (3) City of Duluth shall be named as an Additional Insured under the Commercial General and Automobile Liability and Service Provider will provide Certificate of Insurance evidencing such coverage with 30-days’ notice of cancellation provision included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Service Provider’s interests and liabilities.

B. Certificates showing that Service Provider is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the Term and, if applicable, any Renewal Term(s) of this Agreement.

6. Indemnification. To the extent allowed by law, Service Provider 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 Service Provider’s a) breach of this agreement, b)

its negligence or misconduct or that of its agents or contractors in performing the Services hereunder, c) any claims arising in connection with the Service Provider's employees or contractors, or d) the use of any materials supplied by the Service Provider 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.

7. Data, Records and Inspection.

- a. The City agrees that it will make available all pertinent information, data and records under its control for Service Provider to use in the performance of this Agreement, or to assist Service Provider wherever possible to obtain such records, data and information.
- b. All customer addresses and other data or customer information provided to Service Provider by the City pursuant to this Agreement will be confidential and will not be released by Service Provider without prior authorization from the City.
- c. Records shall be maintained by Service Provider 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.
- d. Service Provider will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- e. Service Provider shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- f. Service Provider 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. Service Provider 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.

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

9. Assignment. Service Provider may not assign this agreement. City may assign this Agreement without the prior written consent of Service Provider.

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

11. 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.

12. 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.

13. Captions. The captions contained in this Agreement are solely for convenience of reference and are not part of the Agreement and shall not be used in construing this Agreement or in any way affect the meaning or interpretation of this Agreement.

14. Force Majeure. Neither party shall be liable for any failure of or delay in performance of its obligations under this 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. Unless mutually agreed in writing by City and Service Provider, no event of force majeure shall be the basis for City to accept substitutions in the varieties, sizes or quality of trees under this Agreement.

[Remainder of page intentionally left blank. Signature page to follow.]

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

CITY OF DULUTH

SERVICE PROVIDER

By:

By:

Mayor

Company Representative

Attest:

Its:

City Clerk

Title of Representative

Date Attested: _____

Date: _____

Countersigned:

City Auditor Date

Approved as to form:

City Attorney Date

EXHIBIT A

REQUEST FOR BID

EXHIBIT B

RESPONSE TO REQUEST FOR BID