



CITY OF DULUTH
REQUEST FOR PROPOSALS FOR
INVASIVE SPECIES REMOVAL AND MANAGEMENT

RFP NUMBER 23-99386

ISSUED June 27, 2023

PROPOSALS DUE Tuesday, July 12, 2023

SUBMIT TO

**CITY OF DULUTH
ATTN: PURCHASING DIVISION
CITY HALL, ROOM 140
411 WEST 1ST STREET
DULUTH, MN 55802**

PART I - GENERAL INFORMATION

I-1. Project Overview.

The City is soliciting proposals from qualified consultant(s) to provide invasive species removal and management in select areas in the St. Louis River Estuary and select areas in Hartley Park. The objectives of this project are to retreat restored acres and remove invasives on adjacent acres.

Kingsbury Creek is a tributary of the St. Louis River Estuary. This 12,000-acre estuary is important to the region's fish and wildlife populations and Lake Superior's biological productivity. Restoration in the creek's corridor began upstream with large-scale buckthorn removal and a mix of trees and shrubs was planted on 214 acres to encourage a diverse native plant community suited to bird migration and nesting. These acres will be treated and 48 adjacent acres treated for a total of 262 acres restored.

Harley Park is a designated Duluth Natural Area. This Park includes a significant northern hardwood forest of sugar maple and red oak and a large wet meadow and willow swamp complex. Tischer Creek, which runs through the Park, is a designated trout stream. Restoration began with large-scale buckthorn removal in several areas of the park, thinning of a historical pine plantation, and the establishment of two pollinator meadows on 50 acres. These acres will be retreated and 25 adjacent acres treated for a total of 75 acres restored.

Funding is provided by a Sustain Our Great Lakes grant and City of Duluth. The funding period is 15 months so work must be completed by September 2025.

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
Deadline to submit Questions via email to purchasing@duluthmn.gov	July 5, 2023
Answers to questions will be posted to the City website no later than this date.	July 7, 2023
Proposals must be received in the Purchasing Office by 4:00 PM on this date.	July 12, 2023

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. 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-5. 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 Proposer's responsibility to periodically check the website for any new information

I-6. 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 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 shall 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-7.Small Diverse Business Information. The City encourages participation by minority, women, disadvantaged, 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://mnuccp.metc.state.mn.us/> .

I-8.Form & Term of the Agreement. The awarded proposer will execute a standard city consulting services agreement, which is attached as Appendix B. This RFP as well as additional conditions and supplementary provisions are deemed to be part of the executed agreement. The term of the agreement will begin once the agreement is fully executed (anticipated by September 1, 2023) and end by August 31, 2025. 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 agreement is executed and Notice to Proceed is provided.

I-9. 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-10. 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 submission package must include 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 and/or team members' experience. The strongest package will demonstrate direct experience collaborating with and/or working with municipalities and in the project areas. 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. Do not include any costs in the Work Plan or Technical Proposal.
5. As relevant to the proposed project, please describe how the proposed project will engage community level partners (e.g. municipalities, NGOs, community organizations, community leaders) to help design, implement, and maintain projects to secure maximum benefits for communities and ensure public use of project sites, maintenance, and sustainability post-grant award.

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:

Prior experience with similar work	40%
Qualifications of the Proposer and Personnel	25%
Work Plan	20%
Cost	10%
Inclusion of workforce development	5%

PART IV – PROJECT DETAIL

IV-1 Background.

The Duluth Natural Areas Program (DNAP) was created to protect and preserve Duluth’s natural heritage by identifying valued environmental properties owned by the city and/or other owners interested in participating by establishing a means to protect such properties from development or exploitation. The City identified places along the St. Louis River and throughout Duluth with the most intact terrestrial and aquatic

habitats and the least development potential. These undeveloped areas, encompassing approximately 3,000 acres, are included in St. Louis River Natural Area (SLRNA) and Hartley Park. These lands represent diverse and important ecosystems. Duluth began invasive species control and restoration on these lands in 2015 and these efforts have continued to this day.

IV-2 Sustain Our Great Lakes.

Sustain Our Great Lakes is a division of the National Fish and Wildlife Foundation created by Congress in 1984. The Foundation is the nation's largest private conservation grant-maker. The Foundation works with the public and private sectors to protect and restore the nation's fish, wildlife, plants and habitats for current and future generations. Foundation funds come from 15 Federal partners, and 53 corporate and other foundation partners. The Foundation is an independent 501(c)(3) nonprofit organization governed by a 30-member Board of Directors approved by the Secretary of the Interior.

Invasive Species Control Program

The invasive species control category supports efforts needed to sustain or enhance the benefits of previous habitat restorations. Funding is limited to control efforts focused on terrestrial, coastal, and aquatic invasive plants. Funded projects demonstrate how invasive control work directly protects, reinforces or enhances the value of habitat restoration projects previously funded by the SOGL.

IV-3 Tasks & Deliverables.

1. Generally, tasks shall include the following:
 - a. Retreat 264 acres of restored native plant communities: 214 acres in Kingsbury and 50 acres in Hartley.
 - b. Inspect all acres for invasives; identify species, removal or retreatment; and document all activities including: species found, extent of infestation, treatment methods, and acres treated or retreated.
2. Specific tasks shall include:
 - a. Inspect previously treated acres for emerging invasives
 - b. Develop appropriate methodology and schedule for removal or treatment of emerging invasives.
 - c. Identify invasives in new treatment areas.
 - d. Develop appropriate methodology and schedule for removal or treatment.
 - e. Document extent of reemergence, species, and acres retreated.
3. Proposals should describe a monitoring plan to measure outcomes and assess the success of the proposed project. At a minimum, the description should: 1) indicate the metrics that will be used to track progress and quantify outcomes; 2) outline the approach for establishing baseline conditions against which post-implementation

conditions will be compared; and 3) demonstrate plans and resources for post-implementation monitoring.

4. Photographic documentation of the progress of the project is required. Please see Additional Conditions for more information.

IV-4 Appendices

Appendix A – Proposal Cover Sheet

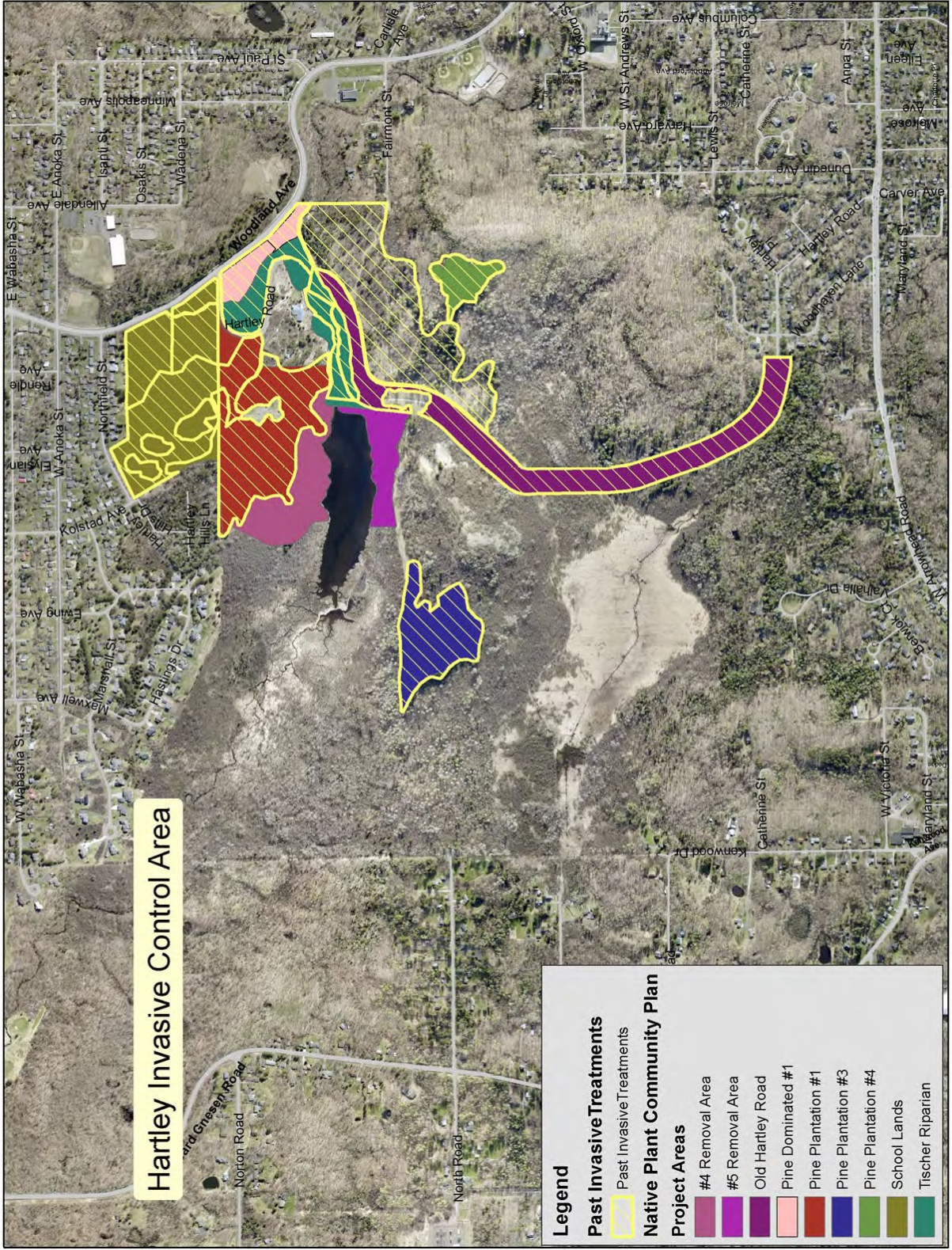
Appendix B – Treatment Area Maps

Appendix C – Supplementary Provisions

Appendix D – Additional Conditions

Appendix E – Sample Agreement

Appendix F – Byrd Anti-Lobbying Certification



Hartley Invasive Control Area

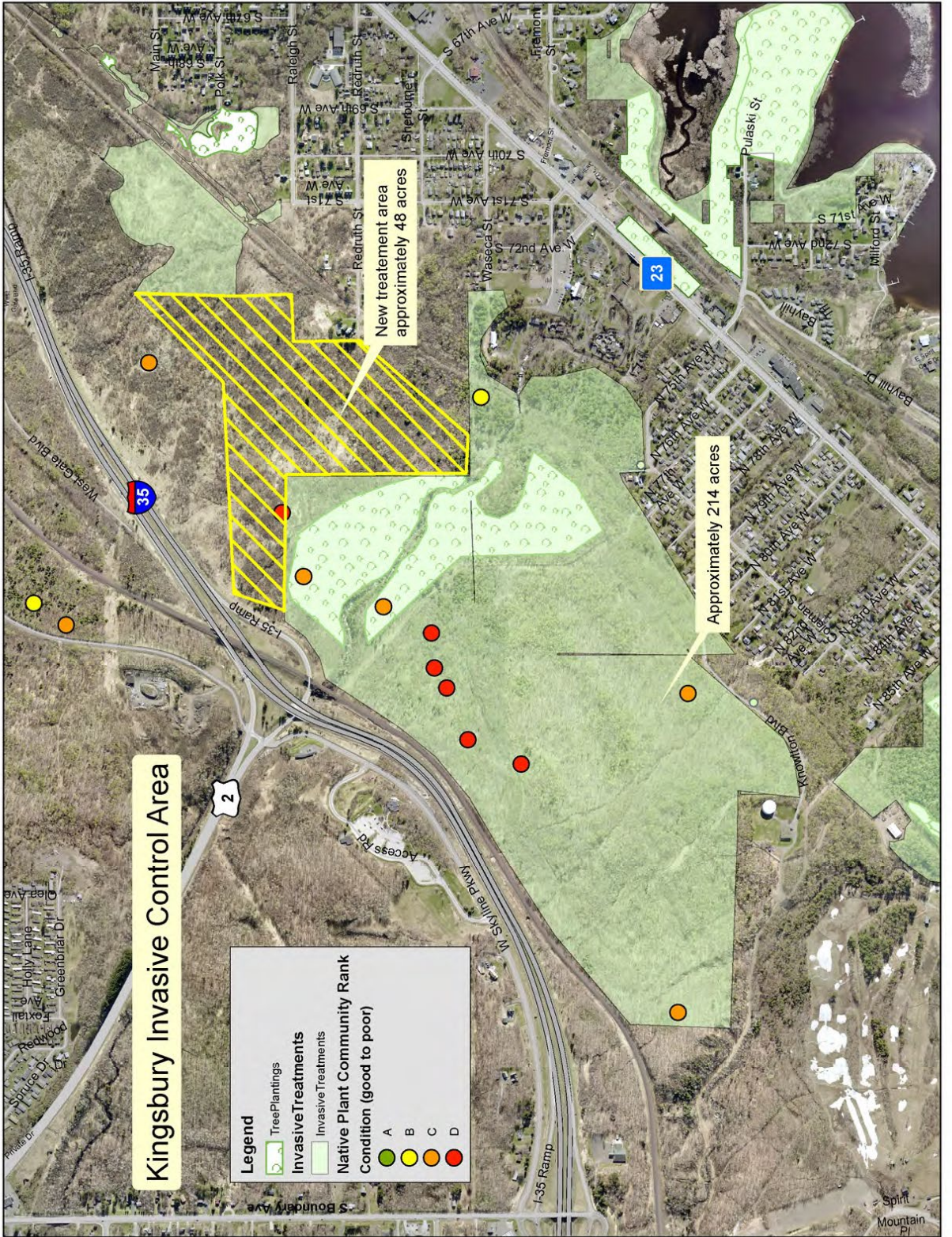
Legend

Past Invasive Treatments

- Past Invasive Treatments

Native Plant Community Plan Project Areas

- #4 Removal Area
- #5 Removal Area
- Old Hartley Road
- Pine Dominated #1
- Pine Plantation #1
- Pine Plantation #3
- Pine Plantation #4
- School Lands
- Tischer Riparian



Kingsbury Invasive Control Area

New treatment area approximately 48 acres

Approximately 214 acres

**APPENDIX A - PROPOSAL COVER SHEET
CITY OF DULUTH
RFP 23-99386
INVASIVE SPECIES REMOVAL AND MANAGEMENT**

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	

City of Duluth
Supplementary Provisions – State & Federal Funding
23-99386 SOGL Invasive Control Hartley-Kingsbury Bay

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. Contract Work Hours and Safety Standards Act

Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor shall ensure that no laborer or mechanic involved in the Work is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. In addition, state or local funding sources may impose more strict requirements or higher rates for wages, benefits, and overtime rates. Contractors must review the labor cost bidding data form included with the bid package and compensate workers accordingly.

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. 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.

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. 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.

14. 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.

Contractors shall include the preceding language in all subcontracts.

**ADDITIONAL CONDITIONS PER GRANT CONTRACT
for 23-99386 SOGL Invasive Control Hartley-Kingsbury Bay**

These additional conditions are required by the funding sources for this project, identified as National Fish and Wildlife Foundation Grant Agreement (City Contract # C24465).

• **Whistleblower Protection Rights**

All employees of grantees, contractors and subcontractors working on this project will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).

Contractors shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C.4712, which states that an employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in 4712(a)(2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

Contractors shall insert the substance of this clause, including these paragraphs a and b, in all subcontracts over the simplified threshold, which is currently \$150,000.

• **Trafficking in Persons**

Pursuant to section 106(a) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C.

7104(g)) (codified at 2 C.F.R. Part 175), NFWF Subrecipient shall comply with the below provisions.

Further, NFWF Subrecipient shall flow down these provisions in all subawards and contracts, including a requirement that Subrecipients similarly flow down these provisions in all lower-tiered subawards and subcontracts. The provision is cited herein:

I. Trafficking in persons.

a. *Provisions applicable to a recipient that is a private entity.*

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the federal awarding agency's pass-through entity may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this

award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

- A. Associated with performance under this award; or
- B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),”.

b. *Provision applicable to a recipient other than a private entity.* We as the federal awarding agency’s pass-through entity may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity-

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

- i. Associated with performance under this award; or
- ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),”.

c. *Provisions applicable to any recipient.*

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

- i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
- ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. *Definitions.* For purposes of this award term:

1. “Employee” means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
- ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

- i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

- **Contractors must maintain an active SAM.gov registration.**

- **Contracts with Members of Congress**

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit. NFWF Subrecipient shall flow down this provision in all subawards and contracts, including a requirement that subrecipients similarly flow down this provision in all lower-tiered subawards and subcontracts.

- **Project Documentation**

The contractor shall be responsible for providing photographic documentation of the progress of the project.

a) Photos of Project include: before-and-after images, images of species impacted and/or staff/volunteers working on Project.

b) Photo will be submitted as individual /jpg files at a 300dpi minimum. Each photo submission needs to include names of the subject matter, location, date photo was taken, caption and photo credit, names of species or activities in photo.

c) Photos shall be submitted at the end of each month.

- **Buy America**

- **Required Use of American Iron, Steel, Manufactured Products, and Construction Materials**

As required by Section 70914 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58), on or after May 14, 2022, none of the funds under a federal award that are part of a Federal financial assistance program for infrastructure may be obligated for a project unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. NFWF Subrecipients must include the requirements in this section in all subawards, including all contracts and purchase orders for work or products under this program.

None of the funds provided under this award may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States,
2. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of

domestic content of the manufactured product has been established under applicable law or regulation, and

3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

This Buy America preference only applies to articles, materials, and supplies consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

For more information, visit the Department of the Interior Buy America web page at www.doi.gov/grants/BuyAmerica and the Office of Management and Budget Made in America web page at www.whitehouse.gov/omb/management/made-in-america/.

- **Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving.**

(Sub)Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order. NFWF Subrecipient shall flow down this provision in all subawards and contracts, including a requirement that subrecipients similarly flow down this provision in all lower-tiered subawards and subcontracts.

- **Prohibition on Issuing Financial Assistance Awards to Entities that Require Certain Internal Confidentiality Agreements.**

The NFWF Subrecipient must not require their employees, subrecipients, or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees, subrecipients, or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information. The NFWF Subrecipient must notify their employees, subrecipients, or contractors that existing internal confidentiality agreements covered by this condition are no longer in effect.

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 provide **DESCRIBE THE SERVICES**;

WHEREAS, City issued a Request for Bid (the “RFB”) for **DESCRIBE THE SERVICES** (the “Services”);

WHEREAS, **NAME** is in the business of providing **DESCRIBE THE SERVICES** to its customers;

WHEREAS, **NAME** submitted a Response to the RFB (the “Response”) 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 RFB;

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. Service Provider shall provide the following Services:

DESCRIBE THE SERVICES, described in more detail on the Response attached to this Agreement as Exhibit A and incorporated by reference.

2. Rates/Price and Payment for Services. The rates (the “Rates”) for the Services are outlined in Exhibit A. The total amount payable under this agreement shall not exceed **dollar amount spelled out (\$)** unless the contract is modified by formal amendment. Payments shall be made **from fund XXX-XXX-XXX**. Service Provider shall be paid for the Services within thirty (30) days of the City’s receipt of an invoice. **(Include any special terms for price adjustments, prepayment or partial prepayment, etc)**

3. Term; Termination. The term of this Agreement shall commence on **(either date of attestation or future date)** and shall continue, unless earlier terminated as provided for herein, for a period **enter term** (the “Term”). The Term will renew for **XX** additional **XX (X)** year terms (each year a “Renewal Term”) unless either Service Provider or City provides the other party with written notice of termination of this Agreement at least sixty (60) days prior to the end of the Term or any Renewal Term. 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 shall be in a company approved by the City of Duluth and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a “form following” provision may make up the difference between the commercial general and auto liability coverage amounts and the required minimum amount stated above. 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.
- (3) City of Duluth shall always be named as an Additional Insured under the Commercial General and Automobile Liability Policies, and Service Provider will provide Certificate of Insurance evidencing such coverage with 30-days’ notice of cancellation provision included.

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 of this Agreement.

6. Indemnification.

To the fullest extent permitted by law, Service Provider shall defend, indemnify, and hold City and its employees, officers and agents harmless from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney’s fees and expenses, whether asserted by itself or any third party, including claims arising from the acts, omissions, negligence, or misconduct of Service Provider or that of its agents, employees, or contractors. The obligations shall include, but not be limited to, the obligations to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City are alleged to be or could be found to arise out of acts or omissions of Service Provider or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of Service Provider arise out of or relate to the services in this Agreement or Service Provider’s negligent, intentional, or wrongful acts or omissions, including breach of any duty in this agreement, of Service Provider. The obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. This Section shall survive the termination of this Agreement for any reason. Service Provider shall not have the obligation to indemnify the City for its intentional, willful or wanton acts.

The Service Provider understands this provision may affect its rights and may shift liability.

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.

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

DRAFT

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

CITY OF DULUTH

SERVICE PROVIDER NAME

By:

By:

Mayor

Representative

Attest:

Its:

City Clerk

Title of Representative

Date Attested: _____

Date: _____

Countersigned:

City Auditor

Date

Approved as to form:

City Attorney

Date

EXHIBIT A

RESPONSE TO REQUEST FOR BID

DRAFT

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