



**CITY OF DULUTH**  
**REQUEST FOR PROPOSALS FOR**  
**PREPARATION OF AN ENVIRONMENTAL ASSESSMENT WORKSHEET (EAW)**

**RFP NUMBER 17-09AA**  
**ISSUED MONDAY, JUNE 12, 2017**

**PROPOSALS DUE FRIDAY, JUNE 30, 2017**

**SUBMIT TO**  
**CITY OF DULUTH**  
**ATTN: PURCHASING DIVISION**  
**CITY HALL, ROOM 100**  
**411 WEST 1ST STREET**  
**DULUTH, MN 55802**

## PART I - GENERAL INFORMATION

**I-1. Project Overview.** The City of Duluth Community Planning Division seeks a qualified firm to prepare an Environmental Assessment Worksheet (EAW), including data analysis, document preparation, and presentation of findings to public bodies and all related work in supporting the City of Duluth Planning Commission in its role as Regulating Governmental Unit for a citizen-petitioned EAW for a proposed mixed-use commercial and residential development near Spirit Mountain and Tallas Island in Duluth, MN. 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	June 20, 2017
Answers to questions will be posted to the City website no later than this date.	June 22, 2017
Proposals must be received in the Purchasing Office by 4:00 PM on this date.	June 30, 2017

**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. Type of Contract.** It is proposed that if the City enters into a contract as a result of this RFP, it will be a standard city professional services agreement. A draft of the proposed contract that the selected firm will be expected to sign is attached as Appendix A.

**I-5. 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-6. Addenda to the RFP.** If the City deems it necessary to revise any part of this RFP before the proposal response date, the City will post an addendum to its website <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-7. Proposals.** To be considered, hard copies of proposals must arrive at the City on or before the time and date specified in the RFP Calendar of Events. The City will

not accept proposals via email or facsimile transmission. The City reserves the right to reject or to deduct evaluation points for late proposals.

Proposals must be signed by an official authorized to bind the Proposer to its provisions. If the official signs the Proposal Cover Sheet attached as Appendix B, 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. In addition, Proposers shall submit one copy of the entire proposal (Technical and Cost submittals, along with all requested documents) on CD-ROM or Flash drive in Microsoft Office-compatible or pdf format.

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

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

**I-9. Term of Contract.** The term of the contract will begin once the contract is fully executed and is anticipated to end by December 31, 2017. The selected Proposer shall not start the performance of any work nor shall the City be liable to pay the selected Proposer for any service or work performed or expenses incurred before the contract is executed.

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

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

developers, and other public or private entities with whom your company is currently, or have been, employed and which may be affected.

- C. It is not currently under suspension or debarment by the State of Minnesota, any other state or the federal government.

**I-11. Notification of Selection.** Proposers whose proposals are not selected will be notified in writing when contract negotiations have been successfully completed and the City has received the final negotiated contract signed by the selected Proposer.

## **PART II - PROPOSAL REQUIREMENTS**

The Proposal shall include the following criteria and be structured accordingly:

1. Cover Letter
2. Firm Information
  - a. Name of Firm/Discipline
  - b. Contact Information
  - c. Staff Size
3. Three References we may contact with whom similar planning work has been completed within the last three years.
4. Provide an overview and description of the firm's total qualifications including any special or unique services it may provide.
5. Specific name and qualifications of the lead member of the project team who will be the primary contact and have full responsibility for the project. Also, complete qualifications must be submitted for other members of the project team.
6. List whether or not this is a joint venture or if your agency is the sole consultant for the entire project. Include any sub-contractors who will be working with your firm on this project and what their responsibilities will be.
7. A brief description of how your firm will complete each element within the scope of services.
8. Cost of your services, in detail, including hours dedicated to each area defined within the scope of services including a separate cost per meeting amount. This will allow City staff to selectively choose the desired services, additional or otherwise. **Cost will only be a factor after the selection process is completed.**

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

The proposals will be reviewed by City Staff. The intent of the selection process is to review proposals submitted by at least three qualified consultants and make an award

based upon qualifications as described therein. A 100-point scale will be used to create the final evaluation recommendations. The factors and weighting on which proposals will be judged are:

Qualifications/experience of the personnel and company working on the project 50%

Understanding of the project scope 15%

Completeness of the proposal 10%

History (completeness & timeliness) of past work with the City of Duluth 10%

Project costs/fees 15%

## **PART IV – PROJECT DETAIL**

The project, Kayak Bay Village Development, will be a mixed use, planned development. A total of 9 development parcels are proposed: two parcels for open space, two parcels for residential development only, two parcels for commercial development only, and three parcels that may be used for either residential or commercial development. The potential maximum density, if all parcels were developed to the approved maximum density, could be a total of 105,000 square feet of retail space, or 175,000 square feet of office space, or 540 units of attached dwellings, or 65 units of unattached dwellings (townhomes).

### Scope of Services:

Evaluate data provided by the project proposer for accuracy, scope, and completeness and provide a report to the City detailing deficiencies and the importance of repairing deficiencies for completion of the EAW, if needed data is missing. If all needed data has been provided and is accurate, provide the City with a letter notifying as such.

Once all needed data has been provided by the project proposer, prepare a complete draft EAW document for review by City staff. Allow time for at least one in-person meeting with City staff to review the draft EAW and at least one significant revision to the draft document as a result of City comments.

Prepare final EAW document and transmit to the City in documents to the City in both Microsoft Word and Adobe Acrobat formats as well as one bound and one unbound paper copy.

Attend the City Planning Commission public hearing on the matter as an observer.

After the end of the 30-day comment period, review all comments submitted with City staff to determine which are substantive and timely and prepare appropriate and complete responses to all that have been determined by the City to be substantive and timely. If additional data is required from the project proposer, prepare a document requesting such, including rationale as to why it is needed. Provide to the City comment responses in both Microsoft Word and Adobe Acrobat formats.

Prepare a document summarizing the main issues for the City Planning Commission to consider in making their determination on the need for an Environmental Impact Statement (EIS). Prepare a draft Record of Decision including a detailed analysis of the four factors listed in Minnesota Rules part 4410.1700, subparts 6 and 7 and complete findings of fact supporting a recommendation on the need for an EIS. Provide this document to the City in Microsoft Word and Adobe Acrobat formats as well as one bound and one unbound hardcopy.

Attend the City Planning Commission meeting, and any subsequent meetings should the matter be tabled, to present the EAW comments and responses, summary of issues, draft Record of Decision and findings of fact and provide suitable responses to the Commission and staff.

Should the Commission determine that additional data is necessary for a determination, assist the Commission and City staff in obtaining the requested data from the project proposer, incorporate the requested information into the draft Record of Decision and findings of fact documents and provide revised documents to the City in both Microsoft Word and Adobe Acrobat formats.

#### Issues to be evaluated in the EAW

In addition to the issues expressed in the attached citizen petition, the EAW will need to contemplate impacts to surrounding roadways, rail, and pedestrians/trail users.

#### Attachments:

Citizen EAW Petition  
Kayak Bay Regulating Plan  
Kayak Bay Regulating Map

To: Brad Johnson of Spirit Valley Land Company, LLC

From: Linda Ross Sellner, Citizen Representative

Re: Petition for Environmental Assessment Worksheet for proposed Kayak Bay Village development, south of Grand Avenue and Warwick Street, Duluth, MN 55807

This is the second notification of my intent to file over 100 signatures collected from residents surrounding proposed development with the Minnesota Environmental Quality Board for environmental review.

The EQB needed to have more information about the project's potential environmental effects as well as evidence to support those negative effects described as "supporting evidence".

This I have now done in much more detail than on the citizen petition copy I sent to you originally.

I am allowed to resubmit the petition with the additional material for new consideration. Along with the re-submission, I must also include a copy of this letter, required to be sent to the Developer, as I did with the original submission.

Linda Ross Sellner

A handwritten signature in blue ink that reads "Linda R. Sellner". The signature is written in a cursive style with a large initial 'L' and a distinct 'R'.

April 22, 2017



We the undersigned, under Minn. Rule 4410.1100, petition the Environmental Quality Board and ask that an Environmental Assessment Worksheet be completed for the Kayak Bay Village Development, proposed by Mr. Brad Johnson of Spirit Valley Land Company. This 28 acre site is directly east of the Riverside Community of Duluth, west of the DNR designated Knowlton trout stream and south of Grand Avenue and Warwick Street. It is an area of low elevation south of the Spirit Mountain highlands and contains pronounced drainage features such as wetlands and two un-named streams—84<sup>th</sup> Ave. W. Creek and 85<sup>th</sup> Ave. W. Creek. The southern receiving water body for this drainage is the St. Louis River, an EPA Area of Concern for pollution. The west half of the site and one-third of the east half of the site are under the Sensitive Lands Overlay of Duluth's Comprehensive Plan and are historically undeveloped greenspace. The developer is proposing ~~33 single family~~ units and 65 townhomes. The retail and office commercial space consists of 350 units with additional commercial development along Grand Avenue. A new road between Grand Avenue and a southern, public parking lot will constitute additional impervious surface over two separate wetlands on site.

In January of 2017 the MPCA offered suggestions for remediating the continuing degradation of Mississippi River water quality by protecting Minnesota forests and wetlands that filter water that flows off urban landscapes and curbing urban runoff that carries sediment and toxic chemicals. St. Louis County's Comprehensive Water Management Plan sited Priority Concern #1 was development in sensitive areas including lakeshore, wetlands and riparian areas along streams and rivers. "Shoreland areas play an important role in maintaining water quality. Wetlands and riparian areas are as much part of the lake or stream as is the water itself...Shoreline vegetation helps prevent erosion and cleans water through natural processes. Limiting impervious surface allows for natural absorption" (pp. 14). Impervious surfaces physically change streams, lakes and wetlands and the run-off from these surfaces carry pollution" (pp. 18).

The greatest incentive in developing the St. Louis River corridor should be improving the water quality of the St. Louis River. Intact greenspace and natural viewsheds of the river will attract the public and enhance participation in outdoor recreation.

Representative of Petitioners: Linda Ross Sellner      402 W. Arrowhead Rd.      Duluth, MN 55803      218-728-1134



<u>Parcel</u>	<u>Gross Acres</u>	<u>D/U Easement Acres</u>			<u>Maximum Density</u>	<u>Max. Height</u>	<u>Notes</u>
A	1.10 ac.	0.08 ac.	1.02 ac.	Commercial (see detail)	10,000 sf Retail 20,000 sf Office	20' Rtl 35' Off.	
B	2.43 ac.	0.19 ac.	2.24 ac.	Mixed Use (see detail)	25,000 sf Retail / 40,000 sf Office / 100 units	72'	
C	5.27 ac.	1.84 ac.	3.43 ac.	Mixed Use (see detail)	35,000 sf Retail / 50,000 sf Office / 150 units	72'	
D	2.70 ac	0.52 ac	2.18 ac.	Mixed Use (see detail)	15,000 sf Retail / 30,000 sf Office / 100 units	72'	
E	1.42 ac.	0.32 ac.	1.10 ac.	Dwellings (see detail)	40 MF units / 15 Res Townhomes	60'	
F	2.91 ac.	2.91 ac.	0.0 ac.	Open Space	n/a		
G	6.65 ac.	2.32 ac.	4.33 ac.	Dwellings (see detail)	150 MF units / 50 Res Townhomes	60'	
H	0.49 ac.	0.49 ac.	0.0 ac.	Open Space/Parking	n/a		
I	2.67 ac.	1.49 ac.	1.18 ac.	Commercial (see detail)	20,000 sf Retail 35,000 sf Office	20' Rtl 35' Off.	
R/W	1.16 ac.	n/a	1.16 ac.	Public Street	n/a	n/a	
<b>Total</b>	<b>26.80 ac.</b>	<b>10.16 ac.</b>	<b>16.64 ac.</b>				

**Permitted Uses in Mixed Use District:**

**Parcels B, C & D (Mixed Use)**

- Retail store Less Than 15,000sqft
- Bank
- Office
- Medical or Dental Clinic
- Lodging (Hotel or Motel)
- Multifamily Rental
- Multi-family Condos
- Restaurant up to 5,000 sqft or more
- Garden Material Sales
- Personal Service or Repair
- Dwelling, one or two Family, Townhomes
- Convention or Event Center

**Parcels A & I (Commercial)**

- Retail Store Less Than 15,000sqft
- Office
- Bank
- Medical or Dental Clinic
- Restaurant less than 5,000sqft
- Garden Material Sales
- Personal service or repair

**Parcels G & E (Dwellings)**

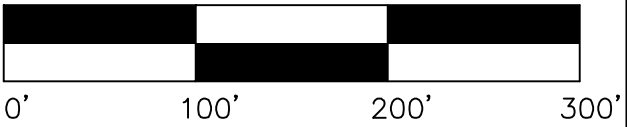
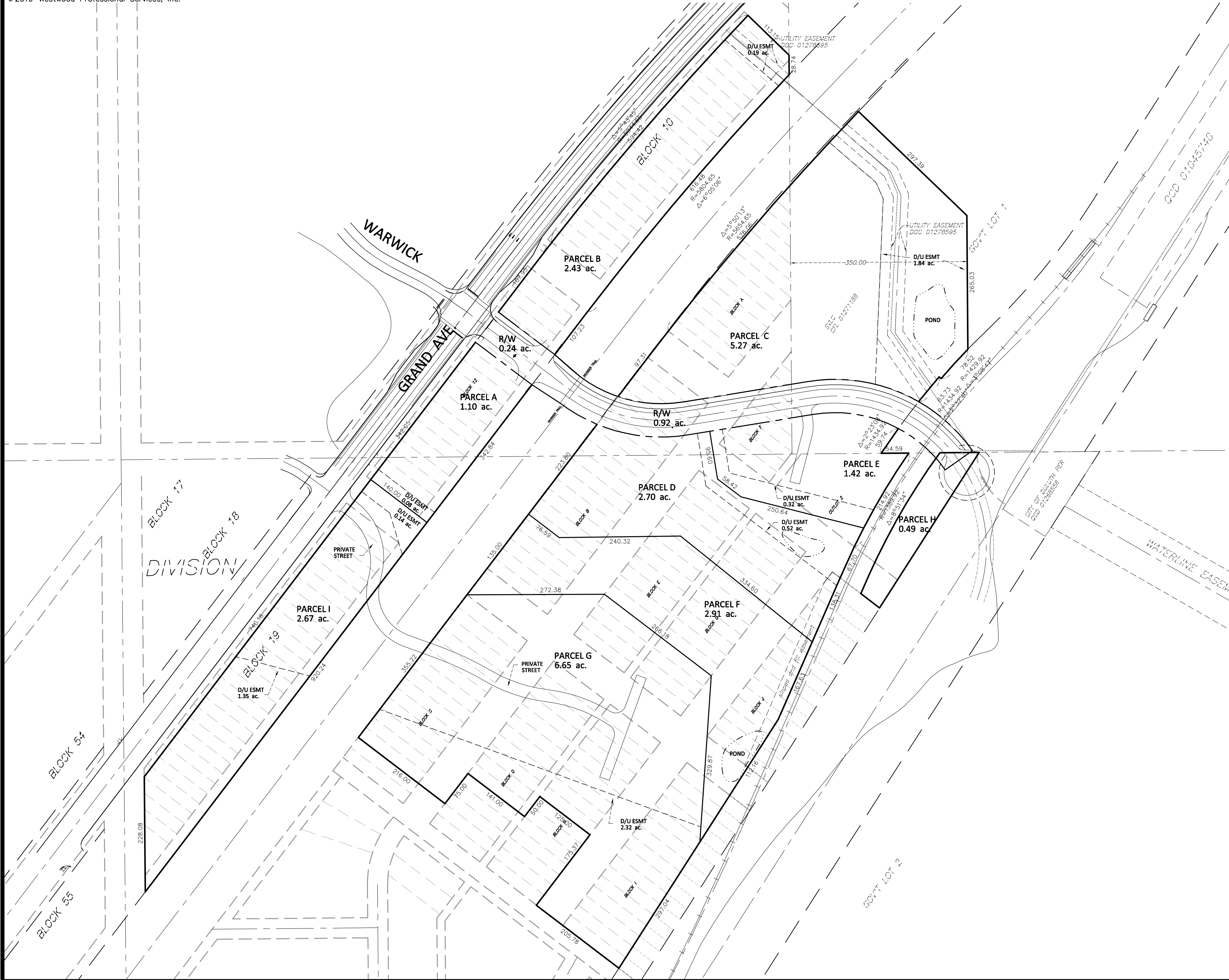
- Dwelling, one-two family
- Dwelling, townhouse
- Dwelling, Multifamily, Rental or Condos

Property Description

See Attached Legals

Parcel Data

Parcel	Gross Acres	D/U Easement Acres	Net Developed Acres	Permitted Uses	Maximum Density	Max. Height	Notes
A	1.10 ac	0.08 ac.	1.02 ac.	Retail/Comm/Office	10,000 sf Retail 20,000 sf Office	20' Rtl 35' Off.	
B	2.43 ac.	0.19 ac.	2.24 ac.	Mixed Use (see detail)	25,000 sf Retail / 40,000 sf Office / 100 units	72'	
C	5.27 ac.	1.84 ac.	3.43 ac.	Mixed Use (see detail)	35,000 sf Retail / 50,000 sf Office / 150 units	72'	
D	2.70 ac	0.52 ac	2.18 ac.	Mixed Use (see detail)	15,000 sf Retail / 30,000 sf Office / 100 units	72'	
E	1.42 ac.	0.32 ac.	1.10 ac.	Multi-family, Residential	40 MF units / 15 Res Townhomes	60'	
F	2.91 ac.	2.91 ac.	0.0 ac.	Open Space	n/a		
G	6.65 ac.	2.32 ac.	4.33 ac.	Multi-family, Residential	150 MF units / 50 Res Townhomes	60'	
H	0.49 ac.	0.49 ac.	0.0 ac.	Open Space/Parking	n/a		
I	2.67 ac.	1.49 ac.	1.18 ac.	Retail/Comm/Office	20,000 sf Retail 35,000 sf Office	20' Rtl 35' Off.	
R/W	1.16 ac.	n/a	1.16 ac.	Public Street	n/a	n/a	
Total	26.80 ac.	10.16 ac.	16.64 ac.				



NOT FOR CONSTRUCTION

Kayak Bay  
Village

Duluth, Minnesota

Date: 12/28/2016 Sheet: 1 OF 1

Draft Prelim.  
Plat

Westwood

Phone (952) 937-5150 7699 Anagram Drive  
Fax (952) 937-5822 Eden Prairie, MN 55344  
Toll Free (888) 937-5150 westwoodps.com  
Westwood Professional Services, Inc.

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed LAND SURVEYOR under the laws of the State of Minnesota.

Craig W. Morse, RLS  
Date: xx/xx/xx License No. 23021

Revisions:


Designed: CLJ  
Checked: RMB  
Drawn: HW  
Record Drawing by/date: 

Prepared for:

SVLC  
8922 Essex Road  
Chanhassen, Minnesota 55317

**AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN**

**CONSULTANT'S NAME  
AND  
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), by and between the City of Duluth, hereinafter referred to as City, and [insert consultant's name] located at [insert consultant's address], hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services for [insert a description of the project and project number, if applicable], (the "Project"); and

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

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

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

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

**I. Services**

Consultant will provide services related to the Project as described in Consultant's Proposal (the "Services"). Consultant agrees that it will provide its services at the direction of the [insert the title of the City Staff – such as "Director of Public Works"] ("Title"). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

**II. Fees**

It is agreed between the parties that Consultant's maximum fee for the Project and Services shall not exceed the sum of [insert written dollar amount of contract and 00/100th dollars (\$0.00)] inclusive of all travel and other expenses associated with the Project, payable from Fund \_\_\_\_-\_\_\_\_-\_\_\_\_; Resolution No. passed on date (remove if no res). All invoices for services rendered shall be submitted monthly to the attention of the [Title]. Payment of expenses is subject to the City's receipt of reasonable substantiation/back-up supporting such expenses.

**III. General Terms and Conditions**

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City. The Primary Consultant(s) assigned to this project will be [insert key consultant's name or names] (the "Primary Consultant"). The Primary Consultant shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Primary Consultant. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Consultant in connection with Consultant's obligations hereunder.

3. Data and Confidentiality, Records and Inspection

- a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or assist Consultant wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
- c. Consultant agrees that all work created by Consultant for the City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work ("City Property"). Consultant further agrees that to the extent the work is not a "work made for hire" Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and

Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Consultant Representation and Warranties

Consultant represents and warrants that:

- a. Consultant and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.



- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Consultant contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.
- f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by **Insert date**, unless terminated earlier as provided for herein.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The

parties do not intend to create any third party beneficiary of this Agreement. Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

To the extent allowed by law, Consultant shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Consultant's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Consultant's employees or contractors, or d) the use of any materials supplied by the Consultant to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance

Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. **City of Duluth shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming himself and City of Duluth. **Upon execution of this Agreement**, Consultant shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- d. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

9. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return

receipt requested, to the following addresses:

**City:** City of Duluth  
411 W First Street  
City Hall Room #  
Duluth MN 55802  
Attn: **Director**

**Consultant:** **Vendor**  
**Address**  
**City State Zip**  
**Attn:**

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of

God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.





**APPENDIX B - PROPOSAL COVER SHEET  
CITY OF DULUTH  
RFP# 17-09AA**

<b>Proposer Information:</b>	
Proposer Name	
Mailing Address	
Website	
Contact Person	
Contact Person's Phone Number	
Contact Person's Fax Number	
Contact Person's E-Mail Address	
Federal ID Number	
Authorized Signature	
Title	