



CITY OF DULUTH

REQUEST FOR PROPOSALS

**BUCKTHORN REMOVAL IN
SUPPORT OF RESTORATION IN
HARTLEY NATURAL AREA,
DULUTH, MN**

RFP NO. 24-99310

ISSUED FEBRUARY 28, 2024

**PROPOSALS DUE MARCH 28,
2024 AT 4:00 PM**

SUBMIT TO:

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

PART I - GENERAL INFORMATION

I-1. Project Overview.

The City is soliciting proposals from qualified ecological restoration professionals to perform dense buckthorn removal in two locations of Hartley Natural Area, Located at 3001 Woodland Avenue, Duluth, MN. The two sites, called “Stormwater BMP Site” and “Enclosure Site” are approximately 7 acres and 3 acres respectively and are easily accessed from a trail or road. Buckthorn in the “Stormwater BMP Site” must be cut, stump treated and chipped by June 1, 2024. Buckthorn in the “Enclosure Site” must be cut, stump treated and chipped by September 1, 2024.

Funding is provided by a Great Lakes Restoration Initiative grant through the EPA. There are special conditions relating to the funding, which can be found in Appendix C.

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 kkubiak@duluthmn.gov .	March 15, 2024
Answers to questions will be posted to the City website no later than this date.	March 20, 2024
Proposals must be received in the Purchasing Office by 4:00 PM on this date.	March 28, 2024

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 Kate Kubiak at kkubiak@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 60 days or until a contract is fully executed.

Please submit one (1) paper copy of the Technical Submittal and one (1) paper copy of the Cost Submittal. The Cost Submittal 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://mnucp.metc.state.mn.us/> .

I-8. Form & Term of the Agreement. The awarded proposer will execute a standard city services agreement, an example of which is attached as Appendix D. 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 April 1, 2024) and end by December 31, 2024. 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 three 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 within the project areas. There is no prescribed format for this section, however it will be limited to three pages in length.
3. A proposed Work Plan with a timeline. Do not include any costs in the Work Plan or Technical Proposal.

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 100point 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	10%
Schedule	40%
Costs	10%

PART IV – PROJECT DETAIL

IV-1 Background

Duluth’s Natural Resource Management Program was created to protect, restore, nurture and assess the City’s forests, watersheds and designated Natural Areas. Hartley Park is one of three designated Natural Areas in the City. Many of this 600-acre property is infested with invasive Glossy Buckthorn. With funding from the Great Lakes Restoration Initiative, the City, through this RFP, is continuing its efforts to restore and enhance the ecological values of this Natural Area by removing dense stands of Glossy Buckthorn and, in cooperation with St. Louis County and Hartley Nature Center, restoring these areas with native trees and shrubs. The “Stormwater BMP” site will have another entity – Community Action Duluth – cutting buckthorn concurrently with the contractor selected through this RFP. Both entities will be working towards the same goal at this site, which is to have the area cleared of buckthorn by June 1, 2024, so that another project, construction of a large stormwater infiltration structure, can commence.

IV-2 Tasks & Deliverables.

In completion of this work, time is of the essence. Glossy Buckthorn in the “Stormwater BMP Site” must be cut, stump treated and chipped by **June 1, 2024**. Buckthorn in the “Enclosure Site” must be cut, stump treated and chipped by **August 31, 2024**. The work must be performed under the following conditions:

1. Buckthorn trees must be cut using chainsaws or similar technique. Large forestry mowing equipment may not be used.
2. Stump (chemical) treatment must use glyphosate and/or tryclopir or similar chemicals and must be applied directly to the stump, not over-sprayed.
3. Slash must be chipped on site. The City will provide a location to store the chipped material, but the contractor must move the material to the storage site.
4. Contractor must participate in three sites visits with City staff to confirm progress and adequate performance. These visits will occur 1.) before the work begins; 2.) mid-way through the work; 3.) once the work is completed.

IV-4 Appendices

Appendix A – Treatment Area Map

Appendix B – Proposal Cover Sheet

Appendix C – Supplementary Provisions

Appendix D – Example Services Agreement

Appendix E – Byrd Anti-Lobbying Certificate (The completed certificate must be completed with your proposal)

**APPENDIX A
TREATMENT AREAS MAP
BUCKTHORN REMOVAL IN SUPPORT OF RESTORATION IN HARTLEY NATURAL
AREA, DULUTH, MN
RFP 24-99310**

“STORMWATER BMP SITE”



“ENCLOSURE SITE”



**APPENDIX B
 PROPOSAL COVER SHEET
 CITY OF DULUTH
 BUCKTHORN REMOVAL IN SUPPORT OF RESTORATION IN HARTLEY
 NATURAL AREA, DULUTH, MN
 RFP 24-99310**

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

**APPENDIX C
CITY OF DULUTH
SUPPLEMENTARY PROVISIONS – STATE AND FEDERAL FUNDING
BUCKTHORN REMOVAL IN SUPPORT OF RESTORATION IN HARTLEY NATURAL AREA, DULUTH
24-99310**

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 2, 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. Equal Employment Opportunity.

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise

provided by law.

- g. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. 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.

8. Rights to Inventions Made Under a Contract or Agreement.

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

9. 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.

10. 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).

11. 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.

12. 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.

13. 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> .

**CITY OF DULUTH
ADDITIONAL CONDITIONS PER GRANT AGREEMENT
BUCKTHORN REMOVAL IN SUPPORT OF RESTORATION IN HARTLEY NATURAL AREA
24-99310**

1. CYBERSECURITY

If awarded contractor's network or information system is connected to EPA ("Agency") networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange, contractor must comply with the following requirement:

EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the contractor's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the contractor agrees to contact the EPA Project Officer no later than 90 days after date of award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

2. TRAFFICKING

Contractor, its employees, its subcontractors and their employees, may not –

- a. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- b. Procure a commercial sex act during the period of time that the award is in effect; or
- c. Use forced labor in the performance of the awarded project.

The Federal awarding agency may unilaterally terminate the award, without penalty, if the contractor –

- a. Is determined to have violated a prohibition of paragraph 2; or
- b. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph 2 through conduct that is either –
 - (1) Associated with performance under this award; or
 - (2) Imputed to the City or contractor 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 Governmentwide Debarment and Suspension (non-procurement)" as implemented by the Agency at 2 CFR 1532.

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.]

SAMPLE

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

APPENDIX E

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