



CITY OF DULUTH

REQUEST FOR PROPOSALS FOR

**PARK, RECREATION, AND COASTAL PRESERVATION PLAN
FOR PARK POINT RECREATION AREA**

RFP NUMBER 25-99177

ISSUED JANUARY 22, 2025

PROPOSALS DUE WEDNESDAY, FEBRUARY 19, 2025

SUBMIT TO

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

PART I - GENERAL INFORMATION

I-1. Project Overview. The City of Duluth is soliciting proposals from qualified professionals to prepare a park, recreation, and coastal preservation plan for the Park Point Recreation Area on Minnesota Point in Duluth, Minnesota. A comprehensive, multi-disciplinary, public planning process is needed to identify preferred solutions to shoreline erosion, enhance and improve access to inclusive recreational amenities and cultural resources, and ensure the protection, restoration, and long-term resiliency of natural resources within the Park Point Recreation Area. Work includes gathering relevant data and public opinion, assessing recreational and natural resource needs, preparing and testing concepts with stakeholders and community members, and developing an implementation plan.

Development of the Park Point Recreation Area Plan will be funded by Minnesota's Lake Superior Coastal Program with funds passed through from the National Oceanic and Atmospheric Administration (NOAA). Supplementary provisions found in Appendix B shall apply, and proposers must complete and submit with their proposal the Byrd Anti-Lobbying Form found in Appendix C. \$130,000 has been allocated for plan development.

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
Pre-proposal Conference (optional, virtual)	January 29, 2025 at 1:00pm
Deadline to submit Questions via email to purchasing@duluthmn.gov	February 4, 2025
Answers to questions will be posted to the City website no later than this date	February 10, 2025
Proposals must be received in the Purchasing Office by 3:00 PM on this date	February 19, 2025
Tentative interview dates	March 3, 2025 March 4, 2025

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

I-4. Pre-proposal Conference. The City will hold a virtual and **OPTIONAL** pre-proposal conference as specified in the Calendar of Events. Interested Bidders can attend via conference call and will find the link for the meeting at <https://www.duluthmn.gov/purchasing/bids-request-for-proposals/>.

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

I-7. Submission. 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, including the completed Byrd Anti-Lobbying Form, and one (1) paper copy of the Cost Submittal. The Cost Submittal should be in a separate sealed envelope. In addition, Bidders shall submit one copy of the entire proposal (Technical and Cost submittals, along with all requested documents) on flash drive in Microsoft Office-compatible or pdf format.

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

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

I-10. Term of Contract. The term of the contract will begin once the contract is fully executed and is anticipated to end by **November 30, 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 contract is executed.

I-11. Prompt Payment of Subconsultants. Per MN Statute 471.425, Subd. 4a., Each contract of a municipality must require the prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

I-12. Mandatory Disclosures. By submitting a proposal, each Bidder understands, represents, and acknowledges that:

1. Their proposal has been developed by the Bidder independently and has been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor or suppliers of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit independent bidding or competition, and that the contents of the proposal have not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder.
2. There is no conflict of interest. A conflict of interest exists if a Bidder has any interest that would actually conflict, or has the appearance of conflicting, in any manner or degree with the performance of work on the project. If there are potential conflicts, identify the municipalities, developers, and other public or private entities with whom your company is currently, or have been, employed and which may be affected.
3. It is not currently under suspension or debarment by the State of Minnesota, any other state or the federal government.
4. 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-13. Notification of Selection. Bidders whose proposals are not selected will be notified in writing.

PART II - PROPOSAL REQUIREMENTS

II-1. Technical Proposal Criteria and Structure. Proposals should include the following criteria and be structured accordingly:

1. Cover Sheet (format provided in Appendix A)
2. Firm Information
 - A. Name of Firm/Discipline
 - B. Contact Information
 - C. Staff Size
3. Overview and description of the firm's total qualifications including any special or unique services it may provide.
4. Description of your firm's experience in completing work of this type including three (3) specific examples and project references (include reference name, phone number, and email, and links or copies of previously completed plans/projects).
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. Complete qualifications must be submitted for other members of the project team, as well.
6. List whether or not your firm will be the sole consultant for the entire project. Include any sub-contractors who will be working with your firm on this project, their responsibilities, and a summary of applicable experience and qualifications.
7. List whether or not your project team, including any sub-contractors, will include a coastal engineer or similar professional. If yes, provide their qualifications and familiarity with the Park Point Recreation Area, if applicable. If no, explain how you intend to achieve the coastal-related elements of the project without such expertise.
8. Summary of your firm's understanding of the project and approach to the scope of work identified in *Section IV - Project Detail*.
9. Detail your firm's scope of work and methods to be used to complete the work outlined in *Section IV-5 Scope of Work*, including steps to undertake, key milestones, project deliverables, and cost control measures. Cost control measures may include identifying specific tasks that City staff could complete or significantly contribute towards to reduce costs (do not include specific dollar amounts).

10. Proposed schedule to accomplish the proposed scope of work, including anticipated community engagement opportunities. The scope of work must be completed no later than **November 30, 2025**.
11. Indicate if your company has a Diversity and Inclusion policy or program. If so, briefly describe the policy or program and how your company directly integrates this into your services.

II-2. Cost Proposal. Provide, **in a separately sealed envelope**, one copy of the cost proposal clearly marked on the outside with “Cost Proposal” along with the responder’s official business name and address. The terms of the proposal as stated must be valid for the length of the project.

Technical Proposals, which must not include any cost information within its content, will be evaluated first. Cost will be a factor after the Technical Evaluation is completed. Provide a lump sum, not-to-exceed total project cost including any sub-consultant fees, along with the following information:

- A. Hours by task for each employee.
- B. Identification of anticipated direct expenses.
- C. Include miscellaneous charges, such as mileage and copies.
- D. Identification of any assumptions made while developing the cost proposal.
- E. Identification of any cost information related to additional services or tasks, include this in the cost proposal, but identify it as additional costs and do not make it part of the total project cost.
- F. A work plan and detail on the scope of service and deliverables for an amount not to exceed xxx.

PART III - CRITERIA FOR SELECTION

III-1. Criteria for Selection. The proposals will be reviewed by a review panel comprised of City staff. The intent of the selection process is to review proposals and make an award based upon demonstration of qualifications and ability meet project expectations. A 100-point scale will be used to create the final evaluation recommendations. The factors and weighting on which proposals will be judged are:

1. Firm and Project Team Experience, including: relevant park master planning experience, community engagement and consensus building experience, past performance on similar plan projects, experience of project team members, experience of any proposed sub-consultants, and the level of involvement by the firm’s principals, project managers and senior staff. (25%)

2. Project Understanding, including: familiarity with the project, awareness of the City's needs, and comprehension of the Scope of Work necessary to complete the plan. (25%)
3. Local Sensitivity, including; familiarity with Duluth, knowledge of the local recreational and climate patterns, understanding of the importance of Minnesota Point, and ability to have primary or sub-consultant staff present in Duluth. (15%)
4. Community Engagement Capabilities, including: ability to develop outreach and visioning efforts, proposed methods for engaging the public, demonstrated ability to facilitate public input from diverse user groups and prioritize competing needs and desires towards consensus. (15%)
5. Timeline and Cost Control, including: proposed project schedule and cost control techniques. (5%)
6. Budget, including: cost to complete the project and the overall value to the City when comparing the proposed fee to the proposed scope of work. (15%)

After reviewing proposals, the City may elect to schedule interviews with top candidates to make a final selection. Top candidates may be asked to submit additional information, as determined necessary by the review panel. The qualifications for top candidates will be verified and references checked. The City reserves the right to approve or refuse subcontractors and/or subconsultants included in the Proposal.

PART IV – PROJECT DETAIL

IV-1. Project Overview. The City of Duluth Parks and Recreation division is soliciting proposals from qualified professionals to prepare a park, recreation, and coastal preservation plan for the Park Point Recreation Area on Minnesota Point in Duluth, Minnesota. A comprehensive, multi-disciplinary, public planning process is needed to identify preferred solutions to shoreline erosion, enhance and improve access to inclusive recreational amenities and cultural resources, and ensure the protection, restoration, and long-term resiliency of natural resources within the Park Point Recreation Area. Work includes gathering relevant data and public opinion, assessing recreational and natural resource needs, preparing and testing concepts with stakeholders and community members, and developing an implementation plan.

Development of the Park Point Recreation Area Plan will be funded by Minnesota's Lake Superior Coastal Program. \$130,000 has been allocated for plan development.

IV-2. Site Overview. Park Point Recreation Area (Rec Area) is an approximately 55-acre park located on Minnesota Point in Duluth, Minnesota. Minnesota Point is the world's largest freshwater sandbar and divides Lake Superior from the St. Louis River Estuary/Superior Bay. The Rec Area is a public water access point for swimming,

surfing, kayaking, canoeing, sailing, ice fishing, ice skating, and other water-based activities and is popular among locals and visitors of Duluth alike. The Rec Area serves as an entry point to the public beach, dunes, and a DNR Scientific and Natural Area (Minnesota Point Pine Forest). Existing infrastructure includes a seasonal public beach house with public restrooms, several parking areas, a hiking path, sand volleyball courts, a sports field, picnicking facilities, standalone restrooms, kayak/canoe storage racks, community sailing infrastructure and facilities, and an accessible boat launch. Minnesota Avenue provides vehicular access to and through the Rec Area, with the road following the bayside shoreline and connecting to Sky Harbor Airport.

IV-3. Site Map.



IV-4. Special Considerations. Record high water levels and severe storms are a known problem for the Rec Area, eroding land on Minnesota Point at an accelerating rate and negatively impacting the Rec Area’s coastline, natural resources, recreation facilities, and public access. The infrastructure and seawall that serve to protect the boat launch and support the sailing program is deteriorating. A beloved playground was removed after it failed safety inspections due to the ground settling, and Minnesota Avenue and the parking areas along the water’s edge are crumbling into the bay. Important elements of this project will include the reimagining of Minnesota Avenue, how various park amenities and the airport are accessed, and how shoreline protection is integrated into the road’s design. Considerations around Minnesota Avenue will require additional consultation with City of Duluth Public Works and Utilities Department.

A previous study, *Park Point Recreation Area Shoreline Mitigation Feasibility Study*, evaluated mitigation options for a significant portion of the Rec Area’s bayside shoreline (see Section IV-6). The study evaluated and scored various alternatives for reducing shoreline erosion and associated risks to infrastructure. Mitigation alternatives that were evaluated include retreating and reconfiguring built infrastructure, establishing living shorelines, incorporating rock revetment, and raising the sports field, among others. The study provided a great amount of information, but did not result in the final selection of alternatives or the prioritization of needed improvements. Another important element of this Rec Area plan process will be to pick up where the feasibility study left off, ultimately identifying preferred long-term mitigation solutions.

Beachgrass and Juniper Shrub are found only on Minnesota Point and the beaches are critical nesting habitat for the endangered Piping Plover. Minnesota Point is of cultural significance for the Fond du Lac Band of Lake Superior Chippewa.

IV-5. Scope of Work. The scope of work should include, at a minimum, three primary phases. Throughout each phase, assume regularly scheduled meetings with City staff and the documentation of those meetings.

1. **Phase 1 – Discovery and Needs Assessment:** Evaluate the quality and condition of park facilities and natural resources, determine community preferences, and identify opportunities to be explored in Phase 2 – Alternatives Development.
 - a. **Data Collection:** Collect and analyze existing information on demographics, operational and capital budgets, local and national recreation trends and use patterns, best practices for balancing coastal resiliency with community recreation activities, park usage data, relevant information from previously completed plan documents (see Section IV-6), precedent park plans, and other data as relevant.
 - b. **Existing Site & Facilities Analysis:** Compile an inventory and assessment of the existing site and facilities, including existing buildings,

recreational facilities, roadways/accessways, parking, boardwalks, coastal infrastructure, extent of shoreline collapse, terrestrial and nearshore fisheries habitat, wetlands, and other natural resources, etc.

- c. **Base Map Development:** Assemble a scaled, digital base map for visually communicating the existing site and facilities analysis, developing and displaying alternatives, and providing a recommended plan for the park and nearshore areas.
 - d. **Phase 1 Community Engagement:** Conduct community outreach to understand past challenges, future opportunities, and improvement preferences from the perspective of diverse community members, stakeholders, and user groups. Assume the following:
 - i. At least three (3) in-person **focus group meetings**, including: City staff, recreational user groups, and natural resource stewards.
 - ii. At least one (1) in-person **community-wide workshop**.
 - iii. At least one (1) on-line **community survey and/or on-line mapping tool exercise**.
 - iv. City staff will be responsible for coordinating the dates, times, and locations of public meetings and for preparing and disseminating promotional materials. City staff will be responsible for presenting to relevant City boards and commissions during this phase.
 - v. Firm will be responsible for preparing and presenting community engagement materials, including presenting successful park plans that may inspire the range of possibility for the park, and providing summary materials following each meeting.
 - e. **Discovery Outcomes:** Based on the data collection, site and facilities analysis, and community engagement outcomes, establish park improvement priorities and goals, and identify notable opportunities and constraints that may affect the implementation of those goals and priorities.
2. **Phase 2 – Concept Development:** Develop, test, and present alternative park improvement approaches to uncover a realistic, community-based vision that maximizes community benefits and environmental resiliency.
- a. **Develop and Test Concept Alternatives:** Develop at least three (3) preliminary, conceptual alternatives for park improvements and test each alternative against the priorities, goals, opportunities, and constraints identified in Phase 1. High-level cost estimates must accompany each alternative.
 - b. **Phase 2 Community Engagement:** Conduct community outreach to gather feedback on proposed concepts and to understand which alternative most resonates with the public. Assume the following:
 - i. At least one (1) in-person **community-wide workshop**, which should include a presentation of outcomes from Phase 1 activities, how those outcomes informed the alternative concepts, and an overview of the concept plans. Community members should have

ample opportunity to provide input and feedback on each of the concepts.

- ii. At least (1) in-person **presentation to Duluth Parks & Recreation Commission**. The slide deck must be provided to the City for public sharing.
 - iii. City staff will be responsible for coordinating the dates, times, and locations of public meetings and for preparing and disseminating promotional materials.
 - iv. Firm will be responsible for preparing and presenting community engagement materials, and providing summary materials following each meeting.
 - c. **Concept Refinement:** Based on testing outcomes, financial considerations, and community feedback on the preliminary alternatives, compile the best and most appropriate features from the conceptual plan alternatives to identify a preferred approach to park improvements in one refined concept plan.
3. **Phase 3 – Park Plan Development:** Develop a realistic, achievable, community-supported park plan to be brought before Duluth City Council for adoption. At a minimum, the plan should include an introduction, summary of the plan process and findings, recommended park vision including a detailed site plan, market-based cost estimates, identification of financing tools and/or relevant grant opportunities, relevant operations and maintenance recommendations, appendices, and quality text, graphics, and images. The final park plan must be provided to the City in editable format and in PDF formatted for ADA compliance. Upon completion of a clean draft plan, assume a minimum of two rounds of review/edits from City staff before the draft plan will be considered to be in its final format and ready for public review.
 - a. **Plan Process Summary and Findings:** Analyze and synthesize information collected in Phases 1 & 2 to help readers understand how and why the recommended park vision was reached.
 - b. **Recommended Park Vision:** Provide a detailed site plan (at approximately 30% design level) and other graphics to illustrate the recommended vision for the park. Support the vision with written text describing each recommended improvement and associated benefits. At a minimum, the vision should include: a preferred solution for addressing shoreline erosion, resilient landscape design and other climate resilience measures, appropriate site access and circulation, safe access to Superior Bay and Lake Superior, inclusive and multi-functional recreational amenities and facilities, and the long-term protection of cultural and natural resources.
 - c. **Market-Based Cost Estimating:** Provide market-based cost estimates for recommended improvements. Market-based cost estimates must include all project costs that the City will incur to implement, from pre-design through construction. Construction cost estimates should include a

sufficient contingency and cost escalation factors in-line with current regional and market-based construction cost trends.

- d. **Phase 3 Community Engagement:** Conduct community outreach to collect comments on the recommended plan. Assume the following:
 - i. At least (1) **presentation to Duluth Parks & Recreation Commission** to present the final draft of park plan and plan recommendations. The slide deck must be provided to the City for public sharing.
 - ii. A **two-week open public comment period** on the recommended plan, and incorporation of any relevant changes as a result of that comment period.
- e. **Park Plan Approval:** City staff will bring the final park plan back to Parks and Recreation Commission after the two-week public comment period to request their recommendation to City Council to adopt the park plan. City staff will bring the plan before City Council for approval.

IV-6. Previous Studies and Other Resource

1. [*Park Point Recreation Area Shoreline Mitigation Feasibility Study*](#): Completed by Ramboll US Consulting, Inc. to identify vulnerable shoreline and suggest green or hybrid gray/green mitigation measures, which included retreating and reconfiguring built infrastructure, establishing living shorelines, and incorporating rock revetment.
2. [*Lake Superior Headwaters Sustainability Partnership Harbor Mapping Tool*](#): This mapping tool provides spatial layers related to the St. Louis River Estuary, including habitat assessments, issues and challenges, desired future conditions, and project opportunities.
3. [*Essential Spaces: Duluth Parks, Recreation, Open Space & Trails Plan*](#): Essential Spaces is the long-rang plan for the Duluth park system. The plan outlines park system goals, strategies, and action items to support a healthy and vibrant community, enhance inclusion and equity, and advance environmental protection under a sustainable budget framework.

APPENDICES

Appendix A – Proposal Cover Sheet

Appendix B – Supplementary Provisions

Appendix C – Byrd Anti-Lobbying Form

**APPENDIX A - PROPOSAL COVER SHEET
CITY OF DULUTH
RFP# 25-99177**

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

**APPENDIX B – SUPPLEMENTARY PROVISIONS
CITY OF DULUTH
RFP# 25-99177**

City of Duluth
Supplementary Provisions – State & Federal Funding
25-99177 RFP for Park, Recreation and Coastal Preservation for Park Point Recreation Area

1. Disbursements

- a. No money under this Contract shall be disbursed by the City to any Contractor unless the Contractor is in compliance with the Federal Agency requirements with regard to accounting and fiscal matters to the extent they are applicable.
- b. Unearned payments under this Contract may be suspended or terminated upon the Contractor's refusal to accept any additional conditions that may be imposed by the Federal Agency at any time; or if the grant, if applicable, to the City under which this Contract is made is suspended or terminated.

2. Subcontracting Requirements

- a. The Contractor shall include in any subcontract the clauses set forth in these City of Duluth Supplementary Provisions in their entirety and shall also include a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
- b. The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the City's prior written approval of the subcontractors. The City will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by a Federal Agency or the Secretary of Labor, United States Department of Labor, to receive an award of such subcontract.

3. Breach of Contract

The City may, subject to the Force Majeure provisions below and in addition to its other rights under the Contract, declare the Contractor in breach of the Contract by written notice thereof to the Contractor, and terminate the Contract in whole or in part, in accordance with Section 4, Termination, for reasons including but not limited to any of the following:

- a. Failure to begin the Work within the time specified in the Contract;
- b. Failure to perform the Work with sufficient labor, equipment, or material to insure the completion of the specified Work in accordance with the Contract terms;
- c. Unsatisfactory performance of the Work;
- d. Failure or refusal to remove material, or remove and replace any Work rejected as defective or unsatisfactory;
- e. Discontinuance of the Work without approval;
- f. Failure to resume the Work, which has been discontinued, within a reasonable time after notice to do so;
- g. Insolvency or bankruptcy;
- h. Failure to protect, to repair, or to make good any damage or injury to property;
- i. Breach of any provision of the Contract;
- j. Misrepresentations made in the Contractor's bid/proposal; or
- k. Failure to comply with applicable industry standards, customs, and practice.

4. Termination

If the Contractor is in breach of the Contract, the City, by written notice to the Contractor, may terminate the Contractor's right to proceed with the Work. Upon such termination, the City may take over the Work and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any additional cost incurred by the City in its completion of the Work and they shall also be liable to the City for liquidated damages for any delay in the completion of the Work as provided below. If the Contractor's right to proceed is terminated, the City may take possession of and utilize in completing the Work such materials, tools, equipment, and plant as may be on the site of the Work and necessary therefore.

City shall have the right to terminate this contract immediately without other cause in the event that all or a portion of the funds that the City intends to use to fund its obligations under the contract have their source with the State or Federal government or any agency thereof and said source reduces or eliminates their obligation to provide some or all of the funds previously committed by it to fund City's payment obligations under the Contract. The City agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date.

Notwithstanding anything herein to the contrary, the City may terminate this Contract at any time upon written notice given by the City (for any reason, including the convenience of the City) to the Contractor at least thirty (30) days prior to the effective date of the termination of this Contract. The City agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date of the termination provided that Contractor has not committed a breach of this Contract. Nothing contained in this section shall prevent either party from pursuing or collecting any damages to which it may be entitled by law.

5. Force Majeure

The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the Work due to any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency; any acts of the City; causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in their performance of some other contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; nor to any delay of any Subcontractor occasioned by any of the causes specified above. The Contractor shall promptly notify the City in writing within ten (10) days of the delay. Upon receipt of such notification, the City shall ascertain the facts and the cause of the delay. If, upon the basis of facts and the terms of the Contract, the delay is properly excusable, the City shall extend the time for completing the Work for a period of time commensurate with the period of excusable delay.

6. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Per 2 CFR 200.321, prime contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms (collectively referred to as socioeconomic firms) are used when possible. The affirmative steps must include:

- a. Placing qualified socioeconomic firms on solicitation lists;
- b. Assuring that socioeconomic firms are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit

maximum participation by socioeconomic firms;

- d. Establishing delivery schedules, where the requirements permit, which encourage participation by socioeconomic firms; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7. Clean Air Act and Federal Water Pollution Control Act

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Contractor agrees to include this provision in any subcontract exceeding \$150,000 that is financed in whole or in part with Federal funds.

8. Energy Standards.

Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

9. Suspension and Debarment.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. A contract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM.gov), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 19898 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

10. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors must certify that that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.

11. Procurement of Recovered Materials

In the performance of this contract, the Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. This shall include making maximum use of products containing recovered materials as designated by the Environmental Protection Agency (EPA) unless (i) the materials cannot be acquired competitively and within the timeframe required by the contract performance schedule; (ii) the materials designated by the EPA do not meet contract performance requirements; or (iii) the materials cannot be acquired for a reasonable price. Information about this requirement, along with the list of EPA- designated items, is available at the EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program> .

12. Telecommunications and Video Surveillance Services or Equipment

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

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

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

13. Domestic Preferences for Procurements

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

Contractors shall include the preceding language in all subcontracts.

14. Invasive Species Prevention

Contractor must follow Minnesota DNR's Operational Order 113, which requires preventing or limiting the introduction, establishment and spread of invasive species. This applies to all activities performed on all lands under this contract and is not limited to lands under DNR control or public waters; see [A Minnesota Management Plan for Invasive Species](#).

15. Pollinator Best Management Practices

Habitat restorations and enhancements conducted on any lands using state funds are subject to pollinator best management practices and habitat restoration guidelines pursuant to MN Statute 84.973. [Best practices and guidelines](#) ensure an appropriate diversity of native species to provide habitat for pollinators through the growing season.

16. Whistleblower Protection Rights

- a. Employees working under this agreement will be subject to the whistleblower rights and remedies in the pilot program on 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).
- b. Contractors awarded contracts over the simplified acquisition threshold (currently \$250,000) related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.

- c. This substance of this clause, including this paragraph c, shall be inserted in all subawards or subcontracts over the simplified acquisition threshold.

17. Grant Contract 24835 Incorporated by Reference

The terms and conditions included in City Contract 24835 (MN DNR Contract 258806) State of Minnesota Grant Contract Agreement, Federal SubAward Agreement are hereby incorporated by reference.

**APPENDIX C – BYRD ANTI-LOBBYING FORM
CITY OF DULUTH
RFP# 25-99177**

This form must be completed and returned with the technical proposal.

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