

EXHIBIT 1

AGREEMENT FOR PROFESSIONAL SERVICES BY AND BETWEEN COMMUNITY ACTION DULUTH AND CITY OF DULUTH

THIS AGREEMENT FOR PROFESSIONAL SERVICES (this “Agreement”) is by and between the City of Duluth, hereinafter referred to as the “City,” and Community Action Duluth, a Minnesota non-profit corporation whose business is located at 2424 West 5th Street, Suite 102, Duluth, Minnesota 55806, hereinafter referred to as “Consultant” for the purpose of rendering services to the City.

WHEREAS, the City requested services for the mechanical and chemical management of non-native *Phragmites australis* in certain portions of the St. Louis River Estuary (the “Project”). There are numerous properties on which the Project may occur—some are city-owned parcels and others are privately owned. A summary of the services to be provided by Consultant are described on the attached Exhibit A (collectively, the “Services”);

WHEREAS, Consultant has represented itself as qualified and willing to perform the Services required by the City; 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 agree as follows:

I. Services

A. Consultant will provide the Services at the direction of the City’s Property and Facilities Manager (the “Manager”). Consultant’s contact person for purposes of administering this Agreement will be Alyssa Hoppe, unless another individual is appointed by Consultant by written notice to the City. In the event of a conflict between Exhibit A and the body of this Agreement, the terms and conditions of the body of this Agreement shall control.

B. At least two permits from the State of Minnesota – Department of Natural Resources (the “DNR”) are needed to carry out the Services. The first DNR permit will allow the mechanical management of *Phragmites australis* and must be obtained prior to the performance of any Services involving the mechanical management of *Phragmites australis*. A second DNR permit, which will allow chemical management of *Phragmites australis*, must be obtained prior to the performance of any Services involving chemical management of *Phragmites australis*. Consultant must have a copy of the applicable permit in its possession at all times while performing the Services on any property.

II. Fees

The City will not pay Consultant a fee or any other compensation for the Project, the Services, or any related expenses.

III. License

A. The Project affects the City-owned properties located in St. Louis County, Minnesota described as follows (collectively, the “City Property”):

1. Parcel 010-2550-05150. This property is legally described as Outlot Three (3), IRONTON FOURTH DIVISION and is depicted on the attached Exhibit B-1.
2. Parcel 010-2550-05140. This property is legally described as Outlot Two (2), IRONTON FOURTH DIVISION and is depicted on the attached Exhibit B-1.
3. Portion of Parcel 010-2746-00620. This property is legally described as the Railroad Right-of-Way across Government Lots Two (2) through Five (5), Section Twenty-six (26), Township Forty-nine (49), Range Fifteen (15). The portions of Parcel 010-2746-00620 affected by the Project are depicted as Sites 4, 5 and 6 on the attached Exhibit B-2.

B. Subject to the terms and conditions set forth herein, the City grants to Consultant a non-exclusive license (the “License”) to enter the City Property for the purpose of providing the Services on the City Property. Consultant agrees that the City Property will only be used for the Project and for no other purpose.

C. All improvements to the City Property under this Agreement will become the exclusive property of the City as they occur.

D. The City shall have unlimited access to the City Property during the Term for any purpose, including for the purposes of inspection and ensuring Consultant’s compliance with the terms and conditions of this Agreement.

E. The City makes no representation that the City Property is suitable for any particular purpose or specific uses and Consultant accepts the City Property in an “as is” condition without representations or warranties of any kind. The operations and activities of Consultant on the City Property shall be at the sole risk of Consultant. The City shall not be obligated to make any alterations or improvements on or to the City Property.

F. Consultant acknowledges that this Agreement only pertains to the City Property and agrees to obtain the proper permissions from owners of the other privately-owned properties affected by the Project.

IV. General Terms and Conditions

A. 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.

B. Assignment

Consultant represents that it will utilize only its own personnel in the performance of the Services and that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City.

C. Data and Confidentiality, Records and Inspection

1. 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 to assist Consultant wherever possible to obtain such records, data and information.
2. 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.
3. 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. Consultant further agrees that to the extent the work is not a “work made for hire” Consultant will assign to the 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 the City, all documents necessary for the 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.
4. 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 termination or expiration of this Agreement.
5. 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.

6. 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 Consultant's 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.

D. Consultant Representation and Warranties

Consultant represents and warrants that:

1. 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.
2. 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 the Services.
3. 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.
4. 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.
5. There is no litigation pending, or to the best of Consultant's knowledge threatened, against 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 Consultant to perform its obligations hereunder.
6. 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.

E. Term

The term of this Agreement shall be deemed to have commenced on March 1, 2018 and performance shall be completed by December 31, 2019 unless terminated earlier as provided for herein (the "Term").

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. 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 which gave rise to such breach.

F. Independent Contractor

1. Nothing in this Agreement 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 the City. Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from the 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, the City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant or its employees while performing the Services.
2. 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.
3. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

G. Indemnity

To the extent allowed by law, Consultant shall defend, indemnify and hold the 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 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, or c) any claims arising in connection with Consultant's employees or contractors, or d) the use of any materials supplied by Consultant to the City unless such material was modified by the City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

H. Insurance

Consultant shall obtain and maintain during the Term the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota and approved by the City:

1. Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, which shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. **The City shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability. Or, as an alternate, Consultant may provide an Owners-Contractors Protective policy, naming itself and the City. Upon execution of this Agreement, Consultant shall provide Certificates of Insurance evidencing the required coverage, in form and substance acceptable to the City, with 30-days' notice of cancellation, non-renewal or material change provisions included.
2. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit. In the event the professional liability 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.
3. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
4. A certificate showing continued maintenance of such insurance shall be on file with the City during the Term.

5. The City does not represent or guarantee that these types or limits of coverage are adequate to protect Consultant's interests and liabilities.
6. The City reserves the right to require Consultant to increase the coverages set forth above and to provide evidence of such increased insurance to reflect the municipal liability limits set forth in Minn. Stat. Section 466.04, as amended from time to time.

I. 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
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, Minnesota 55806
(218) 730-4435

Consultant: Community Action Duluth
Attn: Project Manager
2424 W 5th St. Suite 102
Duluth, Minnesota 55806
218-726-1665

J. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, covenants and agrees that:

1. 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.
2. 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.

K. 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.

L. 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.

M. Force Majeure

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

N. Severability

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

O. 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.

P. 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.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

CITY OF DULUTH

COMMUNITY ACTION DULUTH

By:

By:

Mayor

Company Representative

Attest:

Its: _____

City Clerk

Printed Name: _____

Date Attested: _____

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A



2424 W 5th St, Suite 102, Duluth, MN 55806 | EMAIL: mail@communityactionduluth.org
PHONE: 218.726.1665 | TTY: 800.627.3529 | TOLL-FREE: 866.761.5257 | FAX: 218.726.1612

Phragmites Control Program - Invasive Plant Management 04/09/2018

Erik Birkeland
Property and Facilities Manager
City of Duluth
1532 W. Michigan Street
Duluth, MN 55806
(218) 730-4435

Dear Mr. Birkeland,

On behalf of the St. Louis River Phragmites Technical Team of Advisors, Community Action Duluth Stream Corps will coordinate the mechanical and chemical management of non-native *Phragmites australis* on the following Parcel ID numbers:

- 010-0130-00256 (XIK)
- 010-0130-00291 (XIK)
- 010-0130-00210 (XIK)
- 010-2746-00313 (Spirit Lake Marina)
- 010-2746-00315 (Tate & Lyle)
- 010-3670-00050 (DSPA)
- 010-3910-06940 (DSPA)
- 010-3910-07100 (DSPA)
- 010-3910-05630 (DSPA)
- 010-3670-00050 (DSPA – Erie Pier)
- 010-3910-07340 (Cedar Creek)
- (NULL) Northland Construction
- 010-4400-01210 (Park Point)
- 010-2746-00620 (City of Duluth);
- 010-2550-05150 (Munger Landing, City of Duluth);
- 010-2550-05140 (Munger Landing, City of Duluth)
- 010-4400-01210 (Tax Forfeit – Park Point)

Mechanical and chemical management work to be completed on the property will be performed by a trained crew contracted through the Community Action Duluth Stream Corps (CADSC). All crew members will utilize brush saws and hand trimmers and must comply with all personal protective equipment requirements for use of the designated equipment by both Community Action Duluth Stream Corps procedures. Mechanical management will be completed each year between late winter and early summer, consistent with the dates authorized by the DNR permit. The CADSC crew will be cutting down dead Phragmites plant growth from previous growing seasons. All plant material will remain on site after trimming with no material being transported or removed from the designated work site. St. Louis River Alliance staff will be responsible for coordinating land access with property management, facilitating communication between the Stream Corps field crew leader and property

management, and ensuring that the parameters of the Invasive Aquatic Plant Management Permit issued to the City of Duluth from the Minnesota Department of Natural Resources are carried out correctly. St. Louis River Alliance staff will not directly perform mechanical management in the field and are responsible for the work completed through contract with CADSC.

Chemical management work to be completed on the properties will be performed by a trained crew using imazapyr-based herbicide "Habitat" which is approved for use near or above aquatic habitats. All crewmembers will utilize personal protective equipment designated by the CCMI coordinator including skin and eye protection as well as chemical resistant gloves. Herbicide will be applied using the hand-wicking method for direct application of the chemical to the target plant species in areas where the Phragmites stands are sparse or near areas of human activity such as boat launches or marinas. In areas closed to the public or inaccessible via trail, road, or walking path, the crew will utilize sprayers to efficiently apply the chemical. All chemicals will be stored according to label requirements and mixed off-site at a designated location approved for mixing. During application with sprayers, Imazapyr will be diluted down to a concentration of 1-1.5% and during hand-wicking application it will be diluted down to a concentration of 10%. Full strength chemicals will never be present in the environment. In 2018, chemical management will begin the week of April 16, and all other dates for additional chemical management will occur in the late summer and early fall months after the DNR permit is issued. Each location will be treated one time during the treatment period unless the crew, based on plant regrowth, recommends reapplication. Community Action Duluth staff will be responsible for coordinating land access with property management, facilitating communication between the field crew leader and property management/owners, and ensuring that the parameters of the Invasive Aquatic Plant Management Permit issued to the City of Duluth from the Minnesota Department of Natural Resources are carried out correctly.

Sincerely,



Brandon Van Tassel
Project Manager
Community Action Duluth



	City Property
	Parcel Boundaries
	Road ROW

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.

Exhibit B-1 City Property

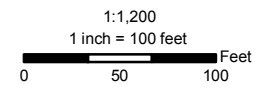


Photo Date: May 2016 Print Date: 7/26/2016

Prepared By:
The City of Duluth GIS Office

EXHIBIT B-2

Glyde Ave

Site 33

Site 4

Site 5

Site 6



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1992

46°41'50.10" N 92°12'19.05" W elev 602 ft eye alt 2215 ft