

SERVICES AGREEMENT

This agreement ("Agreement") between the City of Duluth, a Minnesota municipal corporation ("City") and WETLAND HABITAT RESTORATIONS, LLC ("WETLAND HABITAT RESTORATIONS" or "Service Provider"), with offices located at 2521 27TH Avenue South, Minneapolis, MN 55406.

WHEREAS, City desires to enter into an agreement with a service provider to provide services for Phase 2 of Western Waterfront Trail (WWT) Invasive Species Removal and Native Plantings;

WHEREAS, City issued a Request for Bid (the "RFB") for Phase 2 of the Western Waterfront Trail (WWT) Invasive Species Removal and Native Plantings (the "Services");

WHEREAS, WETLAND HABITAT RESTORATIONS, LLC is in the business of providing invasive species removal and native plantings to its customers;

WHEREAS, WETLAND HABITAT RESTORATIONS, LLC 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 WETLAND HABITAT RESTORATIONS as the lowest responsible bidder and wishes to engage WETLAND HABITAT RESTORATIONS 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:

Western Waterfront Trail (WWT) invasive species removal and native plantings, 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 one hundred sixty-five thousand, four hundred and 00/100 dollars (\$165,400.00) unless the contract is modified by formal amendment. Service Provider shall be paid for the Services within thirty (30) days of the City's receipt of an invoice. Notwithstanding the foregoing, Service Provider acknowledges that financial obligations of the City under this Agreement are subject to appropriation, budgeting and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the Service Provider.

3. Term; Termination. The term of this Agreement shall commence on date of attestation and shall continue, unless earlier terminated as provided for herein, through November, 1, 2017 (the "Term"). Either party may terminate this Agreement at any time prior to the end of the 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.

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) Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- (3) City of Duluth shall be named as an Additional Insured under the Public Liability and Automobile Liability and Service Provider will provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included. 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.
- (4) The use of an Accord form as a certificate of insurance shall be accompanied by two forms:
 - (i) ISO Additional Insured Endorsement (CG-2010 pre-2004) and
 - (ii) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.

B. Such insurance shall protect Service Provider, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Service Provider, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

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

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.

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

CITY OF DULUTH-

WETLAND HABITAT RESTORATIONS, LLC

By: _____
Mayor

By _____

Attest:

Its _____

Date: _____

By: _____
City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A

RESPONSE TO REQUEST FOR BID