





**Purchasing Division**  
*Finance Department*  
Room 120  
411 West First Street  
Duluth, Minnesota 55802

 218-730-5340  
 [purchasing@duluthmn.gov](mailto:purchasing@duluthmn.gov)

**Addendum 1**  
**Solicitation 23-99147**  
**Enger Golf Course Pump Station**

This addendum serves to notify all bidders of the following changes to the solicitation documents:

1. The awarded bidder must sign the Supply & Service Agreement, a draft of which is attached to this addendum. Any questions concerning this agreement must be submitted to [purchasing@duluthmn.gov](mailto:purchasing@duluthmn.gov) PRIOR to bid submission.
2. **Change:**  
**2.02 BID ITEMS -**  
**Bid Item #1**  
Pump Station: Payment shall include furnishing and delivering the pump station and enclosure, labor and materials to fully manufacture the pump station, labor and materials for starting up, testing and providing training per the contract specifications and for winterization as specified. This work shall include but is not limited to furnishing a new pump station and enclosure, testing and adjusting of the completed system and training the golf course superintendent and designated staff in the operation of the pump station.

Please acknowledge receipt of this Addendum by checking the acknowledgment box within the [www.bidexpress.com](http://www.bidexpress.com) solicitation.

Posted: **March 6, 2023**

## SUPPLY & SERVICE AGREEMENT

BY AND BETWEEN

**SUPPLIER**

AND

**CITY OF DULUTH**

THIS SUPPLY AGREEMENT (the "Agreement"), effective as of the date of attestation by the City Clerk (the "Effective Date"), is made by and between the CITY OF DULUTH, a municipal corporation under laws of the State of Minnesota, hereinafter referred to as "City," and **SUPPLIER**, located at **ADDRESS**, hereinafter referred to as "Supplier," for the purpose of providing the below-described Product to the City.

WHEREAS, the City issued an Invitation for Bids (the "IFB") for the provision of Enger Golf Course pump station, including fall winterization, spring startup, and instruction, all conforming to the specifications contained in the IFB (the "Product"), which IFB shall be deemed to be part of this agreement;

WHEREAS, Supplier is in the business of providing the Product to its customers;

WHEREAS, Supplier submitted a responsive bid in response to the IFB (the "Bid") and has represented itself as fully capable of and willing to provide the Product to the City at the pricing and terms set forth in its Bid;

WHEREAS, the City desires to purchase the Product in conformance with the IFB from Supplier in conformance with its Bid;

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

1. Product.

Supplier will furnish the Product at the pricing and terms set forth in its Bid. A copy of the Bid is attached as Exhibit A.

2. Supplier Responsibilities.

- a. Supplier shall be responsible for and shall bear any and all risk of loss or damages to the Product until the Product are delivered to the Site and received and accepted by the City as conforming to the IFB, subject to rejection or revocation as described in Section 2.c. below.

- b. Supplier shall adequately wrap, pack, crate, load, enclose and brace Product to be furnished under the Agreement to insure its delivery to City in a good and undamaged condition, conforming to the IFB.
  - c. City may reject at any time any unit of the Product or the entire shipment of the Product which does not conform to the requirements of the IFB or that is damaged or otherwise unsuitable for the City's use.
  - d. Supplier shall bear all risks as to rejected Product after notice of rejection or revocation of acceptance. City shall only be responsible for the loss, or destruction of, or damage to the rejected Product in City's possession if such loss, destruction or damage results from the negligence of City or its employees and agents acting within the scope of their employment.
  - e. Supplier shall provide as a part of its services adequate testing and inspection to ensure complete compliance of the Product with the specifications. Such testing and inspection shall not imply acceptance of Product by City. Supplier shall provide adequate and competent supervisory personnel to ensure compliance with the specifications. All costs for such testing and inspection shall be paid for by Supplier.
  - f. Supplier shall provide winterization in the the fall of 2024 and restart in the spring of 2025, each to be scheduled as determined by City, and in conformity with the manufacturer's specifications as contained in the IFB.
  - g. Supplier shall provide eight (8) hours of training on the Product to City-designated staff after installation of the Product at a time or times mutually agreeable to City and Supplier.
3. Warranties.
- a. All Product shall be of the most suitable grade given the intended use by City.
  - b. Supplier warrants that all Product will conform to the kind, quality and capability designated or described by the Agreement and the project technical specifications for the duration of the project.
  - c. The rights and remedies of City provided in this Agreement shall not be exclusive and shall be in addition to all other rights and remedies of City (i) as set forth in this Agreement, (ii) under Applicable Law, or (iii) in an equitable proceeding. No failure on the part of City in the exercise of any right or remedy shall operate as a waiver of or by City of its right to exercise any other right or remedy.

- d. Inspection, test, acceptance, or use by City of the Product shall not affect Supplier's obligations under Supplier's warranty, and such warranty shall survive inspection, test, acceptance and use when used in accordance with written directions of Supplier (or any third-party manufacturer supplying any part of the Product).

## **II. Fees**

Supplier agrees to provide the Product at a cost of **AMOUNT IN WRITING and XX/100** Dollars (\$AMOUNT); payable from the following fund: **XXX-XXX-XXXX, Project.**

## **III. Agreement Period**

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

## **IV. Termination**

Either party may, by giving thirty (30) days written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. Supplier shall be entitled to compensation for goods provided and services in connection thereto properly performed by it to the date of termination of this Agreement. In the event of termination due to a default by Supplier, City by shall retain all other remedies available to it, and City shall be relieved from payment of any fees in respect of the services of Supplier which gave rise to such default.

## **V. Events of Default and Remedies**

Failure of either party to perform any obligation under this agreement shall be a default. Upon written notice by the non-defaulting party specifying the nature of the default, the defaulting party shall have thirty (30) days to cure said default. If the defaulting party fails to cure within 30 days, the non-defaulting party shall have the following remedies available to it:

1. terminate this agreement;
2. seek and be entitled to monetary damages;
3. institute and action for specific performance to compel performance of any or all of its obligations under this Agreement;

4. seek and be entitled to injunctive relief as is necessary to prevent violations of the terms and conditions of this Agreement;
5. seek such other legal or equitable relief as a court of competent jurisdiction may be determined as available.

## **VI. General Terms and Conditions**

### **1. Indemnity**

a. The Supplier shall defend, indemnify and save the City harmless from all costs, charges, damages, and loss of any kind that may grow out of the matters covered by this contract. Said obligation does not include indemnification of the City for claims of liability arising out of the sole negligent or intentional acts or omissions of City but shall include but not be limited to the obligation to defend, indemnify and save harmless the City in all cases where claims of liability against the City arise out of acts or omissions of City which are derivative of the negligence or intentional acts or omissions of Supplier such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Supplier and any other such source of liability.

b. The Supplier shall hold and save the City, its officers, employees, representatives and agents, and the City's design professional, if any, harmless from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Technical Specifications.

### **2. Insurance.**

A. Supplier 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 Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single 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 Commercial General

Liability and Automobile Liability and Supplier will provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation and 10-days' notice of non-renewal. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Supplier's interests and liabilities.

B. Such insurance shall protect Supplier, 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 Supplier, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

C. Certificates showing that Supplier 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.

3. Amendments.

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

4. Assignment.

The Supplier shall not assign, transfer, convey or otherwise dispose of this Agreement, or its right to execute it, or its rights, duties, benefits, obligations, liabilities, or title or interest in or to it, or any part thereof, without the written consent of the City. The prohibition contained in this paragraph shall not be deemed to prevent the Supplier from conditionally assigning the Agreement to banks, trust companies, or other financial institutions for financing purposes. Contractor shall remain primarily responsible for all work performed by any Subcontractor or assignee.

5. Data and Confidentiality.

- a. Records shall be maintained by Supplier 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.
- b. Supplier 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. Laws, Rules and Regulations

Supplier 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.

7. Civil Rights Assurances

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

a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.

b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

8. 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.

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

10. Severability

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

11. 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.

#### 12. Independent Contractor

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Supplier as an agent, representative or employee of City for any purpose or in any manner whatsoever. The parties do not intend to create any third-party beneficiary of this Agreement. Supplier and its employees shall not be considered employees of 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 Supplier's employees while so engaged, and any and all claims whatsoever on behalf of Supplier's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in this Agreement, Supplier's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Supplier from liability or judgments arising out of intentional or negligent acts or omissions of Supplier or its employees while performing the work specified by this Agreement.
- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Supplier expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

#### 13. 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.



14. Contact Information

Prior to initiating deliveries, contact **NAME** and **PHONE NUMBER** for authorization.

15. Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of City:      City of Duluth  
   Attn: **NAME**  
   411 W. First St., Room **NO.**  
   Duluth, Minnesota 55802

In the Case of Supplier:      **Supplier Company**  
   Attn: **NAME**  
   Address

*[Remainder of this page intentionally left blank. Signature page to follow.]*

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

**CITY OF DULUTH**

**SUPPLIER**

By:

By:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Company Representative

Attest:

Its:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Title of Representative

Date Attested: \_\_\_\_\_

Date:

Countersigned:

\_\_\_\_\_  
City Auditor                      Date

Approved as to form:

\_\_\_\_\_  
City Attorney                      Date