



CITY OF DULUTH

**BEST VALUE PROCUREMENT
REQUEST FOR PROPOSALS**

ADDITIONAL PUMP FOR SPIRIT MOUNTAIN PUMP HOUSE

RFP NUMBER 23-99547

ISSUED AUGUST 11, 2023

PROPOSALS DUE AUGUST 22,2023

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 seeking proposals for a new pump assembly for Spirit Mountain snow-making that will connect to its current system. The awarded proposer will supervise the installation of the system, and provide commissioning and training. 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
Deadline to submit Questions via email to purchasing@duluthmn.gov	August 16, 2023
Answers to questions will be posted to the City website no later than this date.	August 18, 2023
Proposals must be received in the Purchasing Office by 4:00 PM on this date.	August 22, 2023

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. 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-5. Addenda to the RFP. If the City deems it necessary to revise any part of this RFP before the proposal response date, the City will post an addendum to its website <http://www.duluthmn.gov/purchasing/bids-request-for-proposals/> . Although an e-mail notification will be sent, it is the Bidder's responsibility to periodically check the website for any new information

I-6. Proposals. To be considered, Sealed proposals must arrive at the City Purchasing office, located at 411 West 1st Street, Room 120, Duluth, MN 55802 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) unbound paper copy of the Technical Submittal and one (1) unbound paper copy of the Proposal Cost Submittal. The Cost Submittal should be in a separate sealed envelope.

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

I-7.Small Diverse Business Information. The City encourages participation by minority, women, and veteran-owned businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use minority, women, veteran-owned and other disadvantaged business entities as subcontractors and suppliers. A list of certified Disadvantaged Business Enterprises is maintained by the Minnesota Unified Certification Program at <http://mnucp.metc.state.mn.us/> .

I-8. Award. A service agreement (attached as Appendix B) will be issued to the proposal deemed to provide the best value to the City based on criteria identified in this RFP.

I-9. Term of Contract. This proposal is grant funded and all work must be completed by June 30, 2024. The selected Bidder shall not start the performance of any work nor shall the City be liable to pay the selected Bidder for any service or work performed or expenses incurred before the agreement is executed.

I-10. 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-11. Mandatory Disclosures. By submitting a proposal, each Bidder understands, represents, and acknowledges that:

- A. 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.

- B. 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.
- C. It is not currently under suspension or debarment by the State of Minnesota, any other state or the federal government.
- D. The company is either organized under Minnesota law or has a Certificate of Authority from the Minnesota Secretary of State to do business in Minnesota, in accordance with the requirements in M.S. 303.03.

I-12. Notification of Selection. Bidders whose proposals are not selected will be notified in writing.

PART II - PROPOSAL REQUIREMENTS

Bidders will be required to submit the following items as part of the proposal request.

Technical Proposal

- Cover letter which should include a statement of objective and tasks to demonstrate the proposer's understanding of the project.
- Background information on the company
- Resume of personnel completing the project
- References
- Comparable project experience
- Pump and motor drawing and specifications
- Project timeline
- Buy America certifications

Cost Submittal (must be submitted in a separate sealed envelope)

- Cost submittal to identify the following:
 - Cost of the pump system
 - Installation supervision costs
 - Commissioning and training costs
 - Hourly rates for on-site costs

PART III - CRITERIA FOR SELECTION

The proposals will be reviewed by a committee of City and/or Spirit Mountain staff. The intent of the selection process is to review proposals and make an award based upon information provided within the proposal in order to provide the best value to the City

and Spirit Mountain. A 100-point scale will be used to create the final evaluation recommendations. The factors and weighting on which proposals will be judged are listed below. The evaluation team will review technical proposals first, and only the top three technically-scored proposals will move on to the cost evaluation.

Pump system design	35%
Timeline of delivery and site visits	25%
Prior experience with similar work	15%
Qualifications of the bidder and personnel	10%
Cost	15%

PART IV – PROJECT DETAIL

This Project consists of providing a pump assembly that fits and connects to Spirit Mountain’s existing snow-making system to be installed by others under supervision of the bidder. Bidder will also be responsible for commissioning and training City and Spirit Mountain staff on the equipment.

The pump assembly shall be a Flowserve 10EMM 7-stage VPC (specs attached as Appendix C) or approved equal and must meet the following minimum requirements

- 1,000 gpm
- 1,340’ head
- 580 psi

Additionally, a motor soft-starter, pressure gauges, valves, cabling and piping necessary to connect and work with the current system are required.

The bidder will also need to provide an on-site technician to:

- supervise the installation of the pump system by Spirit Mountain staff
- commission and test the system
- provide training on the system to Spirit Mountain staff

Potential bidders are encouraged to visit the installation site to view Spirit Mountain’s current system. Please contact Ryan Abel at 218-269-7351 or rabel@spiritmnt.com to schedule a visit

This project is funded by a Federal Recreational Trail Program grant through the State of Minnesota Grant # 0040-19-2C. This grant has *Buy America* requirements that follow the Federal Highway Administration’s rules. Please see the requirements attached as Appendix D. Additional supplementary provisions attached as Appendix E are also applicable to this project.

APPENDICES:

- Appendix A – Proposal Cover Sheet
- Appendix B – Draft Services Agreement
- Appendix C – Pump Specs

Appendix D – Buy America requirements
Appendix E – Supplementary provisions

**APPENDIX A - PROPOSAL COVER SHEET
CITY OF DULUTH
RFP# 23-99547
Additional Pump for Spirit Mountain Pump House**

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

SERVICES AGREEMENT (Purchase Order #23-XXXX)

This agreement (“Agreement”) between the City of Duluth, a Minnesota municipal corporation (“City”) and Interstate Development Partners, LLC (“Interstate” or “Service Provider”), with offices located at 710 N Plankinton Avenue, Suite 700, Milwaukee, WI 53203.

WHEREAS, City desires to enter into an agreement with a service provider to provide the installation of a **SERVICE**;

WHEREAS, City issued a Request for Proposal (the “RFP”) for **SERVICE** (the “Services”);

WHEREAS, Interstate is in the business of providing **SERVICE** to its customers;

WHEREAS, Interstate 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 Interstate as the lowest responsible bidder and wishes to engage Interstate 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:

DESCRIPTION OF SERVICE

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 **DOLLAR AMOUNT**. Service Provider shall be paid for the Services within thirty (30) days of the City’s receipt of an invoice.

3. Term; Termination. The term of this Agreement shall commence on either date of attestation and shall continue, unless earlier terminated as provided for herein, **TERM END DATE** (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) Commercial General and Automobile Liability Insurance with limits not less than \$1,000,000 Single Limit and \$1,000,000 Umbrella with a "form following" provision that shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Service Provider's interests and liabilities.
- (3) City of Duluth shall always be named as an Additional Insured under the Commercial General and Automobile Liability Policies, and Service Provider will provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation provision included.

B. Certificates showing that Service Provider is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

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 fullest extent permitted by law, Service Provider shall defend, indemnify, and hold City and its employees, officers and agents harmless from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney's fees and expenses, whether asserted by itself or any third party, including claims arising from the acts, omissions, negligence, or misconduct of Service Provider or that of its agents, employees, or contractors. The obligations shall include, but not be limited to, the obligations to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City are alleged to be or could be found to arise out of acts or omissions of Service Provider or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of Service Provider arise out of or relate to the services in this Agreement or Service Provider's negligent, intentional, or wrongful acts or omissions, including breach of any duty in this agreement, of Service Provider. The obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. This Section shall survive the termination of this Agreement for any reason. Service Provider shall not have the obligation to indemnify the City for its intentional, willful or wanton acts.

The Service Provider understands this provision may affect its rights and may shift liability.

7. Data, Records and Inspection.

- a. The City agrees that it will make available all pertinent information, data and records under its control for Service Provider to use in the performance of this Agreement, or to assist Service Provider wherever possible to obtain such records, data and information.
- b. All customer addresses and other data or customer information provided to Service Provider by the City pursuant to this Agreement will be confidential and will not be released by Service Provider without prior authorization from the City.
- c. Records shall be maintained by Service Provider in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- d. Service Provider will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- e. Service Provider shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- f. Service Provider shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Service Provider will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

8. Independent Contractors. The parties agree that they are independent contractors, and no agency, partnership, employment or joint venture arrangement shall be deemed to exist by virtue of this Agreement, performance hereunder or otherwise. No employee or independent contractor of Service Provider shall be deemed to have any employment or independent contractor relationship with City by virtue of this Agreement or performance hereunder, and such individuals shall have no claim against City for any employee benefits offered to employees of City.

9. Assignment. Service Provider may not assign this agreement. City may assign this Agreement without the prior written consent of Service Provider.

10. Amendment; Entire Agreement. This Agreement embodies the entire understanding of the parties and there are no other agreements or understandings, written or oral, in effect between parties relating to the subject matter hereof. This Agreement may be amended or modified only by an instrument signed by the parties.

11. Applicable Law. This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

EXHIBIT A

RESPONSE TO REQUEST FOR BID

DRAFT



Appendix C

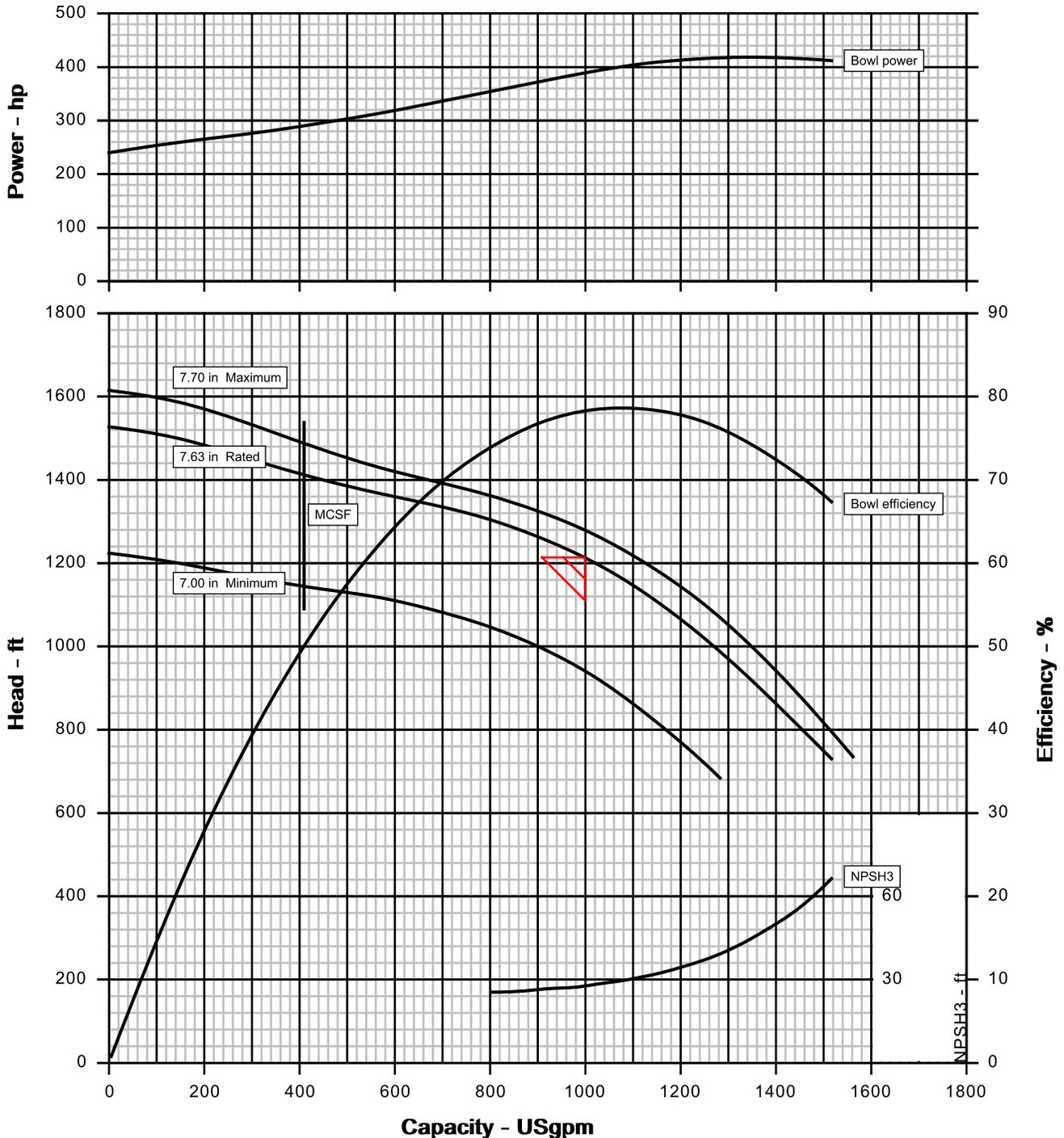
Pump size & type / Stages : 10EMM / 7
 Based on curve no. : EC-2369
 Impeller diameter : 7.63 in

Customer :
 Item number :
 Service : Snowmaking
 Flowserve reference : 4416001746
 Date :

Capacity : 1,000.0 USgpm
 Head : 1,215.00 ft
 Density / Specific gravity : - / 0.999
 Pump speed : 3,550 rpm
 Ns / Nss (per eye) : 2,077 / 8,870 (US)
 Test tolerance : ANSI/HI 14.6 Grade 1B

CURVES ARE APPROXIMATE, PUMP IS GUARANTEED FOR ONE SET OF CONDITIONS; CAPACITY, HEAD, AND EFFICIENCY.

Bowl performance shown below is corrected for materials, viscosity and construction.



Bowl head of 1,215.77 ft corresponds with 1,215 ft head at discharge flange adjusted for elevation and friction losses.

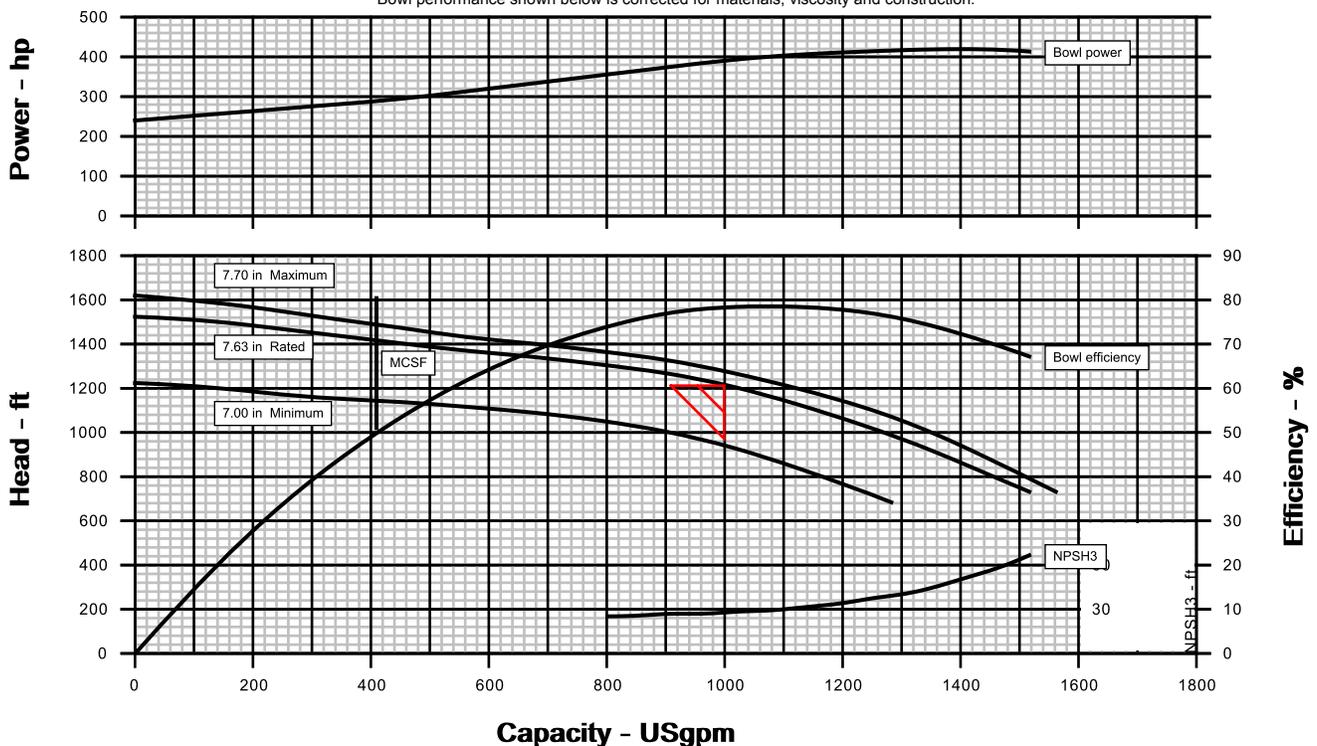
Pump / Stages : 10EMM
 Based on curve no. : EC-2369
 Flowserve reference : 4416001746

Operating Conditions		Materials / Specification	
Capacity	: 1,000.0 USgpm	Material column code	: CS
Water capacity (CQ=1.00)	: -	Other Requirements Hydraulic selection : No specification Construction : No specification Test tolerance : ANSI/HI 14.6 Grade 1B Driver Sizing : Max Power(MCSF to EOC) using SF Seal configuration : Single Mechanical Seal	
Normal capacity	: -		
Rated head @ Discharge flange	: 1,215.00 ft		
Water head (CH=1.00)	: -		
NPSH available (NPSHa) @ Suction flange	: 158.1 ft		
NPSHa less NPSH margin @ Impeller eye	: -		
Maximum suction pressure	: 54.0 psig		
Rated suction pressure	: 54.0 psig		
Liquid			
Liquid type	: Fresh water		
Liquid description	: Cold Water		
Temperature / Specific gravity	: 60 °F / 0.999		
Viscosity / Vapor pressure	: 1.00 cSt / 0.26 psia		

Performance			
Pump speed	: 3,550 rpm	Impeller diameter	: Rated / Maximum / Minimum
NPSH required (NPSH3) @ Impeller eye	: 27.8 ft		: 7.63 in / 7.70 in / 7.00 in
Hydraulic power	: 307 hp	Impeller diameter ratio (rated/max)	: 99.0 %
Efficiency (Pump overall / Bowl) (CE=1.00)	: 78.5 % / 78.6 %	Maximum head at rated diameter	: 1,526.57 ft
Power (rated/max)	: 390 hp / 420 kW	Head rise to shut off	: 25.6 %
Driver power rating	: 400 hp / 298 kW	Total head ratio (rated / max) / (max / rated)	: 94.8 % / 105.5 %
Bowl pressure	: 660.2 psig	** Flow at BEP	: 1,079.3 USgpm
(based on shut off @ cut dia/rated SG)		Flow as % of BEP	: 92.6 %
Maximum allowable	: 624.0 psig	** Minimum continuous flow	: 408.0 USgpm
Bowl & column hydrotest	: 825.3 psig	Thrust - Rated flow / Rated suction	: 4,157.0 lbf
Dischg Head Dischg Region MAWP	: 740.0 psig	Max thrust - Shut off / Rated suction	: 5,221.3 lbf
Ns / Nss (per eye)	: 2,077 / 8,870 (US)	Min thrust - Runout flow / Max Suction	: 2,833.1 lbf
Suction Regions MAWP	: 285.0 psig	(A negative thrust value indicates an upthrust condition)	

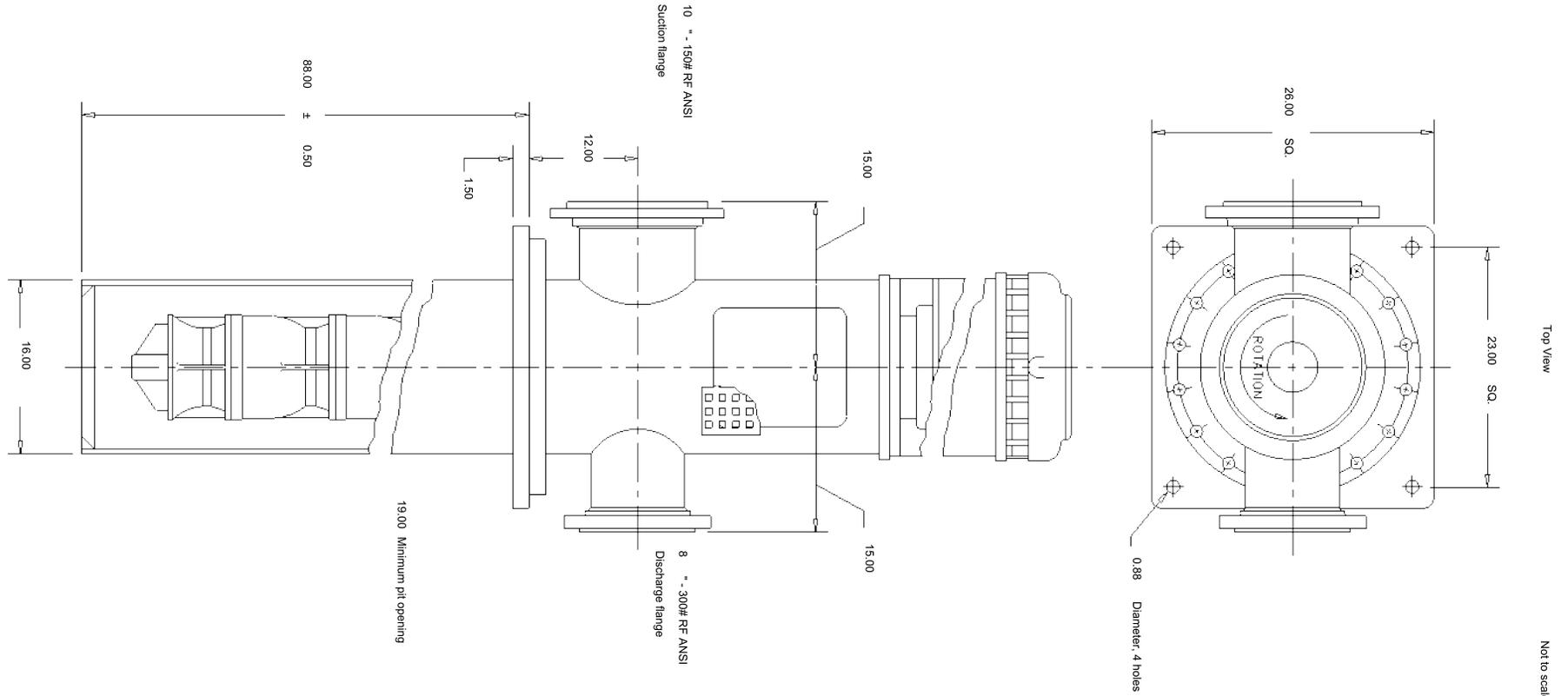
CURVES ARE APPROXIMATE, PUMP IS GUARANTEED FOR ONE SET OF CONDITIONS; CAPACITY, HEAD, AND EFFICIENCY.

Bowl performance shown below is corrected for materials, viscosity and construction.



Bowl head of 1,215.77 ft corresponds with 1,215 ft head at discharge flange adjusted for elevation and friction losses.
 ** denotes rejection criteria

Customer	Pump / Stages	: 10EMM
Customer reference	Based on curve no.	: EC-2369
Item number	Flowserve reference	: 4416001746
Service	Date	
Construction		Driver Information
Bowl construction / lined	: Flanged - Std Wall / Unli...	Manufacturer : Customer Supplied
Impeller type	: Enclosed	Power / SF (Req' / Act')
Impeller fastening	: Colleted	: 400 hp / 298 kW / 1.15 / -
Column construction	: Flanged	Vertical shaft type : Solid
Column flange spec'n	: Taneytown Specification	Driver type : NEMA Electric Motor
Column dia (nominal)	: 8.00 in	Frame size / Base dia : -
Column pipe length	: 0.75 ft	Enclosure : -
Column section length	: 60.00 in	Duty type
Lineshaft brg spacing	: 60.00 in	Efficiency type
Lineshaft diameter	: 1.50 in	Hazardous area class : -
Lineshaft coupling type	: Threaded coupling	Explosion 'T' rating : -
Lineshaft bearings, qty	: 1	Volts / Phase / Hz : 460 / 3 / 60 Hz
Lineshaft construction	: Open	Amps-full load/locked rotor : - / -
Lineshaft lubrication	: Pumpage	Motor starting : Direct on line (DOL)
Disch size/rating/face	: 8 in / 300 lb ANSI / RF	Insulation : -
High Pressure Type "TF"		Temperature rise : -
Thrust stand size	: None supplied	Bearings / Lubrication : - / -
		Motor mounted by : Customer
		Motor Thrust rating down/up : - / -
Materials		Seal Information
Bowl	: Steel A216 Gr WCB	Arrangement : Single Mechanical Seal
Impeller	: Bronze	Size : -
Bowl bearing	: Bronze C84400	Manufacturer / Type : - / None supplied
Bowl shaft	: 416SS A582 Gr 416	Material code (Man'f/API) : None supplied / -
Bowl wear ring	: None supplied	Gland material : Steel
Impeller wear ring	: None supplied	Auxiliary seal device : -
Column	: Steel A53 Type E GrB	Seal flush plan : Plan 13
Lineshaft	: 416 stainless steel	Seal flush construction : Tube
Bearing retainer		Paint and Package
Lineshaft bearing	: Rubber Buna-N	Pump paint : -
Lineshaft sleeve	: -	Support plate paint : -
Discharge head	: Steel A53 Gr B/A36	Shipment type : -
Support plate	: None supplied	Additional information
Weights (Approx.)		Pit / sump depth : -
Complete pump	: 420.0 lb	Pump length : 6.95 ft
Mounting plate	: -	mounting surface to bell/strainer bottom
Driver (net)	: -	Available well diameter : -
Testing		Max dia below mtg surface : 12.00 in
Hydrostatic test	: None	
Performance test	: None	
NPSH test	: None	
Notes		
-		
-		
-		
-		



Top View

Not to scale

Customer :	Pump size & type : 10EMM	Drawing number : -
Item number :	Pump speed / Stages : 3,550 rpm / 7	Date : -
Service :	Flow / Head : 1,000.0 USgpm / 1,215.00 ft	Certified by / Date : -
Customer PO # : -	Driver power / Frame : 400 hp / 298 kW / -	Seal type : None supplied
Flowserve reference : 4416001746	Volts / Phase / Hz : 460 / 3 / 60 Hz	Seal flush plan : Plan 13

REVISIONS									
REV	DESCRIPTION	EDC No	DATE	REV'D	CHK'D	APP'VD			

MOTOR

400 H.P. Vertical SOLID Shaft
3600 R.P.M. 3 Phase 60 Cycle 460 Volts
WP1 Enclosure Mfg. _____

DISCHARGE HEAD -- TYPE TF

TF Discharge Head
8" 300# RF Discharge Flange--holes straddle vertical $\text{\textcircled{C}}$
10" 150# RF Suction Flange--holes straddle vertical $\text{\textcircled{C}}$
 Shaft Seal _____ MECHANICAL SEAL

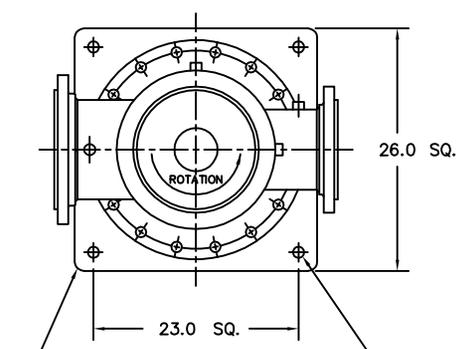
PUMP

7 Stage 10EMM Bowl ENCLOSED Impeller

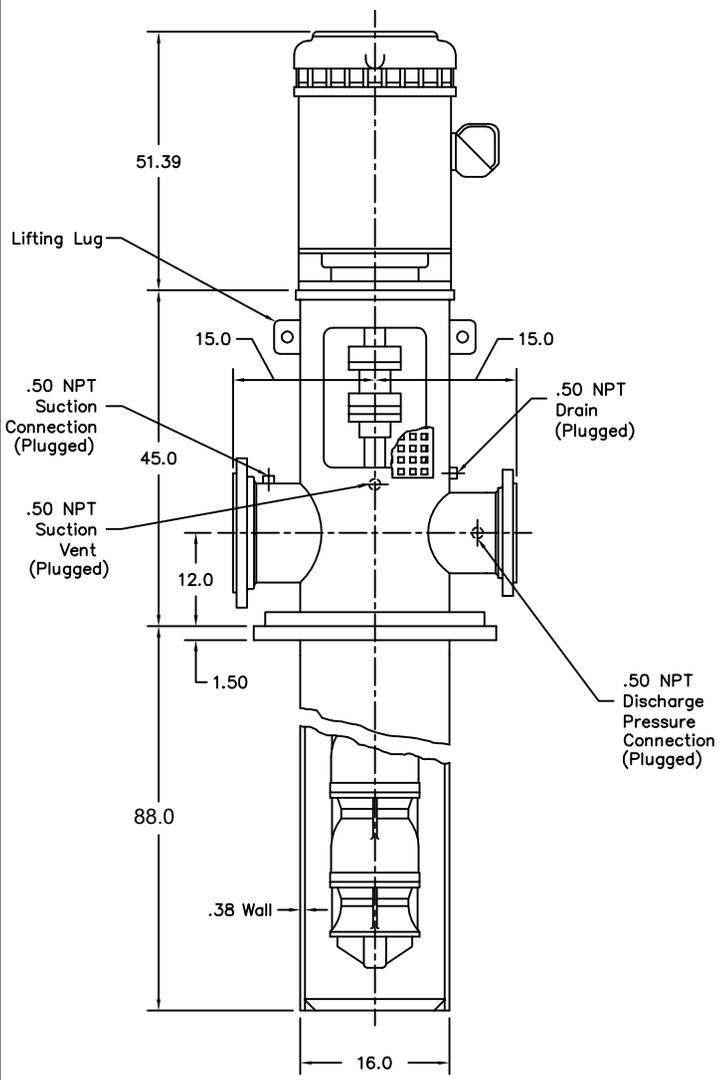
MATERIALS

Bowls Ductile Iron Barrel STEEL
 Impellers BRONZE Column NONE
 Pump Shaft 416 S.S.
 Bowl Brgs. BRONZE
 Head STEEL

Driver Weight 2630 lbs. Pump Weight 2289 lbs.
 Pump will be shipped Assembled



TOP VIEW



STATUS OF APPROVAL Released		CUSTOMER INFORMATION		OPERATING CONDITIONS Flow: 1000 Head: 1215 RPM: 3550	
ORDER NO. P008435					
DRAWN BY MSC		DATE 3/2/15		DWG TITLE	
GENERAL ARRANGEMENT					
SIZE A2		DRAWING NO. GP008435		REV. B	
SCALE		UNITS INCHES		SHEET NO. n/p	

Appendix D

C. Buy America Provision

All projects (if combined trail and equipment) must abide by the [Buy America provision requirement](#) for grants through FHWA policy.

Buy America laws apply to steel, iron, manufactured products, and construction materials permanently incorporated in a project funded by RTP when the total value of the materials or equipment exceeds \$2,500. The provision requires these materials be melted and manufactured domestically and that documentation is obtained to verify Buy America compliance.

These provisions apply to all materials and equipment permanently incorporated into the project, regardless of whether the items are acquired and paid for with matching funds or donated to the project sponsor as part of the RTP match. Examples of materials that must comply with Buy America include steel bridge girders, steel railings, steel structures, steel trailers, steel structural elements of trailhead facilities, and steel tools and equipment (such as a groomers). Steel tools or incidental materials that do not comply with Buy America must be tracked and the total may not exceed \$2,500.

To document Buy America compliance, **project sponsors must obtain certification from the manufacturer documenting that all manufacturing processes documenting that all occurred domestically.** Heat mill certificates for all steel parts are typically used for verification. Certificates must be provided with the request for reimbursement and retained in the project sponsor's grant files.

FHWA's Buy America laws are different from other Buy American and Made in America laws that might apply to other agencies and programs. Ensure that vendors are aware that RTP funds fall under FHWA's Buy America requirements: [Buy America Field Compliance](#). Please review the "[Side-by-Side Comparison Information Sheet](#)" and [Buy America Questions and Answers](#) about how Buy America applies to FHWA funded projects.

NEW: Expanded Buy America Guidance effective November 10, 2022

Buy America requirements have been expanded under the 2021 Build America, Buy America Act. The Act expands existing Buy America requirements to other types of materials and manufactured products incorporated into an RTP project. These new requirements will apply to all projects approved for funding after November 10, 2022. More detailed guidance is expected to be provided to states.

Build America, Buy America requires that the following conditions be met, and that documentation be obtained from suppliers and contractors to demonstrate compliance.

Iron and Steel: Same as the existing requirements described above, steel and iron materials incorporated into the project must be produced in the United States. This includes all manufacturing processes, from the initial melting stage through the application of coatings.

Manufactured Products: must be produced in the United States. This means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United State is greater than 55% of the total cost of all components of the manufactured product.

Construction Material: in addition to iron and steel, all construction materials must be manufactured in the United States. Construction materials include article, materials, or supplies that is or consists primarily of non-ferrous metals, plastic and polymer-base products (including polyvinylchloride composite building materials), glass, lumber and drywall.

Under these rules, construction material do not include cement, or cementitious materials aggregates such as stone, sand, or gravel or aggregate binding agents or additives.

GRANT APPLICANTS should research product availability as part of the scope and budget development process. While standards to document compliance have not been provided to states

at this time, grant applicants should request Buy America documentation from potential vendors, contractors, and suppliers that meet the requirement described above.

While the Build America, Buy America Act outlines a waiver process, FHWA's waiver process remains inaccessible to states. It is unknown at this time whether the waiver process will become accessible under the expanded rules.

Appendix E
City of Duluth
Supplementary Provisions – State & Federal Funding

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. Contract Work Hours and Safety Standards Act.

Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor shall ensure that no laborer or mechanic involved in the Work is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. In addition, state or local funding sources may impose more strict requirements or higher rates for wages, benefits, and overtime rates. Contractors must review the labor cost bidding data form included with the bid package and compensate workers accordingly.

8. 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.

9. 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).

10. 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.

11. 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.

12. 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> .

13. 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.

Contractors shall include the preceding language in all subcontracts.