

CONSTRUCTION CONTRACT

ELECTRIC SCIENTIFIC COMPANY

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DULUTH ECONOMIC DEVELOPMENT AUTHORITY

THIS AGREEMENT, made and entered this ____ day of July 2020, is by and between the **DULUTH ECONOMIC DEVELOPMENT AUTHORITY**, a municipal corporation, hereinafter referred to as “**DEDA**” party of the first part, and **ELECTRIC SCIENTIFIC COMPANY**, 7505 Highway 7, Minneapolis, MN 55426, hereinafter referred to as the “**Contractor**,” party of the second part;

WITNESSETH: That the Contractor and DEDA agree as follows:

1. The following shall be deemed to be part of this contract:
 - a. The annexed resolution and legal advertisement of DEDA.
 - b. The bid request and specifications, including all required forms, as modified by irreconcilable language in this written contract.
 - c. The bid by Contractor, as modified by irreconcilable language in this written contract.
 - d. The performance bond and payment bond certification.
 - e. All provisions of law applicable to a contract of this nature.
2. The Contractor agrees to furnish and deliver to DEDA all labor, supervision, material, equipment, supplies, insurance, performance bond, payment bond and everything else necessary for the replacement of the fire control panel and components at the Maintenance Repair and Overhaul (MRO) Facility, located at 4600 Stebner Road, Duluth, MN 55803, all in strict accordance with plans and specifications prepared by Leo A. Daly, and your bid of \$116,000.00. Contractor shall not commence any work under this contract until Contractor receives written authorization from the duly authorized DEDA Representative.
3. DEDA agrees to make progress payments and final payments to the Contractor as stated in the contract specifications. The total amount payable under this contract shall not exceed One Hundred Sixteen Thousand and no/100ths Dollars (\$116,000.00) unless the contract is modified by formal amendment or change order. Payments under this Agreement shall be made from fund 866-860-5400. Due to the dollar amount of this contract, a Project Labor is not included as part of this contract (City Code Section 2-29).
4. The Contractor shall furnish and maintain in full force and effect, until this contract is completely performed by the Contractor, a performance bond and payment bond if and when required by law, or if and when required by DEDA.

5. Inasmuch as this contract concerns work, materials and equipment needed for the public benefit, the provisions of this contract relating to the time of performance and completion of work and delivery of materials or equipment are of the essence of this contract.

6. Indemnity

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

b. The Contractor shall hold and save the City and DEDA, its officers, employees, representatives and agents, and the Architect, 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 or DEDA, unless otherwise specifically stipulated in the Technical Specifications.

7. Insurance

a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and City of Duluth and DEDA from all liability described in Paragraph 6 above, subject to provisions below.

(1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.

(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; shall be in a company approved by DEDA; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.

- (3) The City of Duluth and DEDA shall be named as **Additional Insureds** under the Public Liability, Excess/Umbrella Liability* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth and DEDA. Contractor shall also provide evidence of Statutory Minnesota Workers Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

**An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth and DEDA as additional insureds.*

- (4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City of Duluth and DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to the City of Duluth and DEDA will render any such change or changes in said policy or coverages ineffective as against the City of Duluth and DEDA.
- (5) In addition to the insurance requirements above, the Contractor shall provide proof of Builders Risk Insurance on a "Multi-Peril-All-Risk" basis, which includes theft of material not installed and glass breakage. Contractor(s) is (are) liable for losses within deductible coverage.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, 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 Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City of Duluth and DEDA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City of Duluth and DEDA during the term of this Contract. In the event any work contemplated by the Contract is sublet, the Contractor shall have the duty to assure that the Subcontractors provide insurance in

accord with the minimum requirements herein imposed on the Contractor prior to commencement of any work on a subcontract.

- d. Contractor shall be required to provide insurance meeting the requirements of this Paragraph 7 unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City of Duluth and DEDA which is reasonably available.
8. No claim whatsoever shall be made by the Contractor against any officer, agent or employee of DEDA for, or on account of, anything done, or omitted to be done, in connection with this contract. If this contract is not made in conformity with mandatory provisions of any statute, or of the ordinances and charter of the City of Duluth, the Contractor agrees to raise no defense and make no claim against DEDA or the City of Duluth on the basis of ratification, laches, estoppel, or implied contract.
9. The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, 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 DEDA, evidenced by a resolution duly adopted by the DEDA. The prohibition contained in this paragraph shall not be deemed to prevent the Contractor from subcontracting or making assignments to banks, trust companies, or other financial institutions. Contractor shall remain primarily responsible for all work performed by any Subcontractor.
10. The Contractor agrees that in the hiring of common or skilled labor for the performance of any work under this contract, Contractor will not, by reason of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in local commissions, disability or age, discriminate against any person or persons who are citizens of the United States who are qualified and available to perform the work to which such employment relates.
11. The Contractor agrees that Contractor shall not in any manner discriminate against or intimidate or prevent the employment of any person or persons, or on being hired, prevent or conspire to prevent any person or persons from the performance or work under this contract on account of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, disability or age.

12. The contractor agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, contractor's books, records, documents, and accounting procedures and practices are subject to examination by DEDA or the state auditor for six years from the date of final payment under this contract.
13. In accordance with the requirements of Minnesota Statutes §471.425 Subd. 4a, or its successor, the Contractor shall pay any Subcontractor within ten days of the Contractor's receipt of payment from the City or DEDA for undisputed services provided by the Subcontractor. The Contractor shall 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 any unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the Subcontractor. A Subcontractor who prevails in a civil action to collect interest penalties from a Contractor must be awarded its costs and disbursement, including attorney's fees, incurred in bringing the action.
14. Contractor shall comply with all local, state and federal laws, rules and regulations applicable to this contract and to the work to be done and things to be supplied hereunder.
15. This contract may be cancelled or terminated by DEDA, and all moneys due or to become due hereunder may be forfeited for any failure to perform any terms or conditions of this contract including but not limited to any violation of the terms or conditions of Section 10 or 11 of this contract.
16. Any waiver by any party of any provision of this contract shall not imply a subsequent waiver of that or any other provision.
17. This contract is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis, County, Minnesota, and the parties to this Agreement waive objection to the jurisdiction of this court, whether based on convenience or otherwise.
18. This Agreement constitutes the entire agreement between DEDA and the Contractor on the subject matter hereof. It may not be changed, modified, discharged or extended except by written instrument duly executed on behalf of DEDA and the Contractor. The Contractor agrees that no representations or warranties made by DEDA shall be binding upon DEDA unless expressed in writing herein.
19. This Agreement shall not be in force and effect, or in any way binding upon DEDA until the same shall have been approved by DEDA, and signed by its President and Secretary.

- 20. The Contractor unconditionally guarantees to perform all work pursuant to this contract in a good and workmanlike manner, in strict compliance with the specifications and instructions hereto attached, and to the satisfaction of DEDA.
- 21. This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

AUTHORIZATIONS:


**DULUTH ECONOMIC DEVELOPMENT
AUTHORITY**



President

Matthew Carter

President's Printed Name



Secretary

ZACK FILIPOVICH

Secretary's Printed Name
Date 6/26/2020

**CONTRACTOR - ELECTRIC
SCIENTIFIC CORPORATION**



Contractor's Representative

SCOTT A. JOHNSON, VP

Representative's Printed Name/Title

Date: 6/29/2020