

**MAJOR SUPPLY AGREEMENT  
BY AND BETWEEN  
RACHEL CONTRACTING, INC.  
AND  
CITY OF DULUTH**

THIS MAJOR SUPPLY 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 **RACHEL CONTRACTING, INC.**, located at 4125 Napier Court NE, St. Michael, MN 55376, 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 armor and toe stone 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;

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

**I. Products**

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.

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 four million, eight hundred fifty-one thousand, four hundred forty-seven and 50/100 dollars (\$4,851,447.50); payable from the following fund: 225-125-1811-5310, Projects Storm17, Storm18 and Strm1018.

## **III. 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 the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Supplier and City from all liability described in Paragraph III.1. above, subject to provisions below.

(1) 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 the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.

(2) City of Duluth shall be named as Additional Insured under the Public Liability, Excess/Umbrella Liability\* and Automobile Liability, or as an alternate, Supplier may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Supplier to 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 Supplier'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 as an additional insured.*

(3) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City 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 City will render any such change or changes in said policy or coverages ineffective as against the City.

## 3. Liquidated Damages.

If the Supplier is in breach of this Contract by virtue of failing to complete the Work within the time stipulated in the Contract Documents, including any extensions of time for

excusable delays as herein provided, and the City suffers damages as a result thereof, all or any portion of which cannot be reasonably determined as to the amount thereof because of the nature of such damages, the Supplier shall pay to the City to compensate City for such portion of the damages it suffered as a result thereof, the amount of \$5,000.00 as fixed, agreed, and liquidated damages for each calendar day of delay, until the Work is completed, and the Supplier and its sureties shall be liable to the City for the amount thereof.

4. 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.

5. 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.

6. 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.

7. 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.

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. 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.

10. 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.

11. 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.

12. Contact Information

Prior to initiating deliveries, contact Mike LeBeau at 218-340-0221 for authorization.

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





## General Info

### Total:

\$4,851,447.50

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### Number

19-99643

### Deadline

11/01/2019 02:00 PM CDT

### Vendor

Rachel Contracting, Inc.

### Submitted

11/01/2019 01:34 PM CDT

### Signed by

Kevin Klimmek

### Opened

11/01/2019 02:00 PM CDT **By** pstalvig@duluthmn.gov

### Description

Stone Materials for Canal Park Storm Damage Repair

### Allows zero unit prices and labor

No

### Allows negative unit prices and labor

No



# Addenda Acknowledgment

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By checking this box, I acknowledge that I have reviewed Addendum 1, issued October 18, 2019; and Addendum 2, issued 10/28/19. \*

## Description of Supplies

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The City of Duluth is requesting bids for armor and toe stone material, including testing and delivery to the Canal Park project location in Duluth, MN (see map in bid package).

**Freight terms: FOB destination, freight prepaid.**

**Do not include sales tax in the unit price. A Minnesota Revenue Certificate of Exemption will be provided upon request.**

**PRE-BID MEETING:** A pre-bid meeting will be held at the delivery site on Thursday, October 17, 2019 at 1:00 pm. Interested bidders are strongly encouraged to attend. Please meet in the front of the Endion Station, 200 Lake Place Drive, Duluth, MN near the parking lot.

Questions pertaining to this project should be directed to [purchasing@duluthmn.gov](mailto:purchasing@duluthmn.gov), (218) 730-5340.

Electronic bids will be received until 2:00 PM local time on the date listed above. Electronic bids are preferred; suppliers wishing to submit a paper bid **must** contact the purchasing office. **E-MAIL BIDS WILL NOT BE ACCEPTED.** The City Purchasing Agent or her designee will conduct a public bid opening immediately following the bid deadline in City Hall, 411 West 1st Street, Room 120, Duluth, MN 55802.

**The City of Duluth reserves the right to split the award where there is substantial savings to the City, to waive informalities and to reject any and all bids. Price may not be the only consideration for bid award. Bids must be firm for a minimum of 60 days.**

Note: Bid rigging is a serious crime. If you have any information concerning collusive bidding, even a request to submit a complementary bid, please call the Minnesota Attorney General's Office at (651) 296-1796.

By submitting this bid, I acknowledge that all documents are being signed with my electronic signature. I also acknowledge that I may be required to sign paper versions of the required documents to complete the contract package if I am the awarded contractor. \*

**Bid Package, Access Map, Draft Agreement, Etc.**

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Bid Package

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Map of Access and Staging Area

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Draft Supply Agreement

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Addendum 1  
Issued 10.18.2019

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Payment Bond  
To be completed by successful bidder if any subcontracts are executed.

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Pre-Bid Mtg Sign-In Sheet

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Addendum 2  
Issued 10.28.19

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Addendum 3  
Issued 10.29.19

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# Bid Bond

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**Bond Percentage**

5.00%

**Guarantee Method \***

Electronic Bid Bond

**Electronic Bid Bond**

**Bond ID \***

SMN19624484

**Surety Agency \***

Surety 2000

**Verify Bid Bond \***

Bid bond verification has been completed.

**Surety State \***

Minnesota

**Principal \***

Rachel Contracting, Inc

**Exhibit A - Item Listing**

\$4,851,447.50

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<b>Item No.</b>	<b>Description</b>	<b>Units</b>	<b>Est. Quantity</b>	<b>Unit Price</b>	<b>Extension</b>
1	Armor Stone, 6.0 to 9.0 tons	TON	72,280	\$63.35	\$4,578,938.00
2	Toe Stone, 10.0 to 12.0 tons	TON	4,170	\$65.35	\$272,509.50
					<b>Total: \$4,851,447.50</b>

Please enter the number of tons you can commit to providing for this project.

Description	Number of Tons
Armor Stone, 6.0 to 9.0 tons each by May 31, 2020	24,110.00
Toe Stone, 10.0 to 12.0 tons each by May 31, 2020	1,390.00
Armor Stone, 6.0 to 9.0 tons each by June 30, 2020	18,910.00
Toe Stone, 10.0 to 12.0 tons each by June 30, 2020	1,390.00
Armor Stone, 6.0 to 9.0 tons each by July 31, 2020	29,260.00
Toe Stone, 10.0 to 12.0 tons each by by July 31, 2020	1,390.00

**Subcontractors - please provide the name and City of any known subcontractors at the time of the bid. Successful bidder must notify City in writing of any additional subcontractors added.**

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**Subcontractor name, city and state**

American Engineering Testing, Inc. (AET) Duluth, MN

# Declaration of Non-Collusion

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I hereby swear (or affirm) under penalty of perjury:

- 1) That I am the bidder (if the bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation);
  
- 2) That the attached bid or bids have been arrived at by the bidder independently and have been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition;
  
- 3) That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids and will not be communicated to any such person prior to the official opening of the bid or bids;
  
- 4) That a family relationship between a City of Duluth employee and bidder/proposer are in non-collusion; and
  
- 5) That I have fully informed myself regarding the accuracy of the statements made in this declaration.

I agree that my Info Tech Digital Signature applies as my legal binding signature for the Declaration of Non-Collusion. \*

**Firm Name: \***

Rachel Contracting, Inc.

**Bidder's Federal Identification Number:**

20-4366969



## Byrd Anti-Lobbying Amendment Certification

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I certify to the best of my knowledge that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying, " in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801 *et. seq.*, apply to this certification and disclosure, if any.

By checking this box, I am applying my digital signature to this certification as an authorized official. \*

**Authorized Official \***

Matthew Coz, President

## Envelope

The information supplied in this component will be available to the owner-agency immediately after the bid deadline, but before the bid is opened.

**Company Name (as registered with the MN Department of State) \***

Rachel Contracting, Inc.

**Company Address \***

4125 Napier Court NE

**City \***

St. Michael

**State \***

MN

**Zip Code \***

55376

**Name of Primary Contact \***

Matthew Coz

**Phone Number of Primary Contact \***

(763) 424-1500

**E-mail Address \***

Estimating@RachelContracting.com