

SUPERIOR METROPOLITAN DISTRICT NO. 1
RESOLUTION NO.SMD#1-11
SERIES 2022

A RESOLUTION OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1
BOARD OF DIRECTORS APPROVING AN AGREEMENT WITH EVOQUA
WATER TECHNOLOGIES LLC FOR THE PURCHASE OF A GRANULAR
ACTIVATED CARBON TREATMENT SYSTEM AT THE WATER TREATMENT
PLANT

WHEREAS, the Town's water treatment facilities suffered damage from the Marshall Fire, and a Granular Activated Carbon ("GAC") treatment system will remove compounds that are causing taste and odor issues to the water; and

WHEREAS, the Board of Directors finds it in the best interest of the public health, safety and welfare to purchase a GAC system for \$1,309,000.

NOW, THEREFORE, BE IT RESOLVED BY THE METROPOLITAN DISTRICT NO. 1 BOARD OF DIRECTORS, AS FOLLOWS:

Section 1. The Services Agreement between the District and Evoqua Water Technologies LLC is hereby approved in substantially the same form as attached hereto, subject to final approval by the District's Attorney.

ADOPTED this 14th day of November, 2022.



Clint Folsom, President

ATTEST:



Lydia Yecke, Secretary



AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this 20th day of December, 2022 (the "Effective Date"), by and between the Superior Metropolitan District No. 1, 124 East Coal Creek Drive, Superior, CO 80027, a quasi-municipal corporation of the State of Colorado (the "District"), and Evoqua Water Technologies, an independent contractor with a principal place of business at 2360 W Broadway Rd # 109 Mesa, AZ 85202 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the District requires services; and

WHEREAS, Contractor has held itself out to the District as having the requisite expertise and experience to perform the required services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the District is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the District, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The District shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the District shall have any remedy or right of set-off available at law and equity.

III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor, the District shall pay Contractor \$1,309,000. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the District for such fees, costs and

expenses. Contractor shall not be paid until the Scope of Services is completed to the satisfaction of the District.

IV. RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The District's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Contractor shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the District. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the District all of its right, title, and interest in such work. The District may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a District employee for any purposes.

VII. INSURANCE

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the District.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the District and the District's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the District. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the District, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the District a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the District and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault

of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

IX. MISCELLANEOUS

A. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the District shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

E. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

F. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

H. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. *Governmental Immunity.* The District and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the District and its officers, attorneys or employees.

J. *Rights and Remedies.* The rights and remedies of the District under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the District's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the District not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.



SUPERIOR METROPOLITAN DISTRICT NO. 1

[Signature]
Clint Folsom, President
MARK LACIS,

ATTEST:

[Signature]
Lydia Yecke, Secretary

CONTRACTOR

By: [Signature]
Thomas R. Wilson

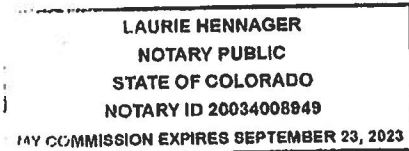
STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 20 day of December, 2022, by Thomas R Wilson as VP/Gen ISS of Evolution Water Technologies

My commission expires: 09/23/2023

(S E A L)

[Signature]
Notary Public



**EXHIBIT A
SCOPE OF SERVICES**

Contractor's Deliverables

- Contractor shall turn over ownership of the Granular Activated Carbon Equipment (Evoqua leased HP1020CLXSYS systems).

**Addendum to Agreement for Services dated December 20, 2022 ("Agreement")
Between Superior Metropolitan District No.1 ("Buyer") and
Evoqua Water Technologies LLC ("Seller")
Dated: December 20, 2022**

Buyer and Seller agree to modify the Agreements as follows. Where any terms and conditions of this Addendum 1 ("Addendum") conflict with the Agreement, the Agreement will control:

1. **Warranty.** Subject to the following sentence, Seller warrants to Buyer that the goods provided by Seller shall materially conform to the description in Seller's proposal which is the subject of this Agreement and shall be free from defects in material and workmanship. The foregoing warranty shall not apply to any goods specified or otherwise demanded by Buyer and not manufactured or selected by Seller, as to which (i) Seller hereby assigns to Buyer, to the extent assignable, any warranties made to Seller and (ii) Seller shall have no other liability to Buyer under warranty, tort or any other legal theory. Seller warrants the goods, or any components thereof, through the earlier of (i) eighteen (18) months from delivery of the goods (the "Warranty Period"). If Buyer gives Seller prompt written notice of breach of this warranty within the Warranty Period, Seller shall, repair or replace the subject parts, re-perform the service or refund the purchase price. Seller's warranty is conditioned on Buyer's (a) operating and maintaining the goods in accordance with Seller's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Seller. Seller's warranty does not cover (i) damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Seller) and (ii) media goods (such as, but not limited to, resin, membranes, or granular activated carbon media) once media goods are installed.
2. **Consequential Damages/Limitation of Liability.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PUNITIVE OR OTHER INDIRECT DAMAGES..

AGREED this Addendum modifies the Agreement between the parties, and is incorporated therein by this reference.

Buyer: Superior Metropolitan District No.1

By: 

Name: MARK LACY

Date: 12/21/22

Seller: Evoqua Water Technologies LLC

By: 

Name: THOMAS R. WATERS, VP/CM

Date: 12/20/22



evoqua
WATER TECHNOLOGIES

**Water Treatment Systems
Buyout**

TOWN OF SUPERIOR, CO

Quotation 500596

12/20/2022

Confidentiality Statement

This document and all information contained herein are the property of Evoqua Water Technologies LLC. The design concepts and information contained herein are proprietary to Evoqua Water Technologies LLC and are submitted in confidence. They are not transferable and must be used only for the purpose for which the document is expressly loaned. They must not be disclosed, reproduced, loaned or used in any other manner without the express written consent of Evoqua Water Technologies LLC. In no event shall they be used in any manner detrimental to the interest of Evoqua Water Technologies LLC. All patent rights are reserved. Upon the demand of Evoqua Water Technologies LLC, this document, along with all copies or extracts, and all related notes and analyses, must be returned to Evoqua Water Technologies LLC or destroyed, as instructed by Evoqua Water Technologies LLC. Acceptance of the delivery of this document constitutes agreement to these terms and conditions.



12/20/2022

Mr. Jim Widner, P.E.
Town of Superior, Co

Proposal Number: 500596
Project Location: Superior CO Water Treatment Plant 1300 McCaslin Blvd Louisville, CO 80027

Re: Water Treatment Systems Buyout

Dear Mr. Jim Widner, P.E.,

Evoqua Water Technologies (Evoqua) is pleased to submit this firm proposal to Town of Superior, Co for buyout of the (3) Evoqua leased HP1020CIXSYS systems (Equipment) to Town of Superior, Co.

Referencing Evoqua's firm lease proposal No. 494960.R0 and subsequent Budgetary Equipment Buyout Prices provided on 3-31-2022, Evoqua is offering the following firm Equipment Buyout Price based on 6 months of rental for the period July - December 2022. A credit for 1/2 of monthly equipment rental has been applied for a total credit of \$81,000 off the original purchase price of \$1,309,000.

Price

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Equipment Buyout - (3) HP1020CIX Rental Systems	\$1,309,000
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Please note should the Town of Superior choose to purchase the equipment, demobilization and demob freight will no longer be applicable. However, other prices presented in firm proposal No. 494960.R0 would still be applicable.

Provisions

1. Evoqua's price does not include, and Evoqua shall not be responsible for, any taxes, permits, tariffs, duties or fees (or any incremental increases to such taxes, permits, tariffs, duties or fees enacted by governmental agencies) unless specifically agreed herein or otherwise by Evoqua in writing.
2. Price is valid until December 28,2022.



Proposal # 500596
Evoqua Water Technologies LLC

If you have any questions or comments concerning this information, please feel free to call me at (908) 400-3156. ***Thank you for the opportunity to provide this firm proposal.***

Sincerely,

Mark DeLaurentis, Sr
Sr Sales Engineer/SW Region Account Manager
2360 W Broadway Rd #109
Mesa, AZ 85202
(908) 400-3146 cell
mark.delarentis@evoqua.com

Evoqua Water Technologies LLC

Accepted by:

The proposal and terms & conditions herein are acknowledged and accepted:

_____	_____
Name/Title	Date
_____	_____
Authorized Signature	Purchase Order Number
_____	_____
Billing Address	Site Address/ Contact