

**SUPERIOR METROPOLITAN DISTRICT NO. 1
RESOLUTION NO. SMD#1-2
SERIES 2023**

**A RESOLUTION OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1
BOARD OF DIRECTORS APPROVING AN AGREEMENT WITH APGN, INC.
FOR THE PURCHASE OF HIGH SPEED TURBO BLOWERS FOR THE
SUPERIOR ROCK CREEK WASTEWATER TREATMENT FACILITY**

WHEREAS, the Town's water treatment facilities require blower replacements located at the Rock Creek Wastewater Treatment Facility ("WWTF"); and

WHEREAS, the Board of Directors finds it in the best interest of the public health, safety and welfare to purchase three replacement high speed turbo blowers for the WWTF.

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

Section 1. The Board of Directors hereby approves an Agreement between the Superior Metropolitan District No. 1 and AGPN, Inc. for the purchase of three high speed turbo blowers in substantially the same form as attached hereto, subject to final approval by the District's General Counsel.

ADOPTED this 23rd day of January, 2023.



Mark Lacis, President

ATTEST:


Lydia Yecke, Secretary

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (the "Contract") is made and entered into this 23rd day of January, 2023 (the "Effective Date"), by and between the Superior Metropolitan District No. 1, a Colorado special district with an address of 124 East Coal Creek Drive, Superior, CO 80027 (the "District"), and APGN Inc., an independent contractor with a principal place of business at 1270 Bd Michele-Bohec, Blainville, Quebec J7C 5S4, Canada ("Contractor") (each a "Party" and collectively the "Parties").

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

1. Scope of Work. Contractor shall perform the following described work (the "Work"), in accordance with this Contract and the Contract Documents, attached hereto and incorporated herein by this reference:

Contractor shall furnish three (3) High Speed Turbo Blowers ("HSTB") for the Superior Rock Creek Wastewater Treatment Facility Blower Replacement Project

2. Certificate of Insurance. Within 10 days of the date of this Contract, Contractor shall provide the certificate of insurance required by the Contract Documents. The Parties agree that a performance bond does not need to be furnished pursuant to the Contract Documents.

3. Commencement and Completion of Work. Contractor shall commence the Work within 10 days of date of the Notice to Proceed. Delivery of Equipment shall be accomplished by the 26th day of June, 2023, unless the period for completion is extended otherwise in accordance with the Contract Documents.

4. Compensation/Contract Price. The District agrees to pay Contractor, subject to all of the terms and conditions of the Contract Documents, for the Work, an amount not to exceed \$239,640.00. The District shall pay Contractor in the manner and at such times as set forth in the General Provisions such amounts as required by the Contract Documents.

5. Keep Jobs In Colorado Act. Pursuant to the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, *et seq.* (the "Act"), and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the "Rules"), Contractor shall employ Colorado labor to perform at least 80% of the work under this Contract and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, "Colorado labor" means a person who is a resident of the state of Colorado at the time of this Contract, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a *bona fide* qualification. A resident of the state of Colorado is a person with a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last 30 days. Contractor represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed \$500,000 in the aggregate for any fiscal year.

6. Governing Law and Venue. This Contract 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.

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

8. Integration. This Contract and any attached exhibits constitute the entire Contract between Contractor and the District, superseding all prior oral or written communications.

9. Third Parties. There are no intended third-party beneficiaries to this Contract.

10. Notice. Any notice under this Contract shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed to:

The District: Jim Widner, Project Manager
Superior Metropolitan District No. 1
124 East Coal Creek Drive
Superior, CO 80027

Contractor: APGN Inc_
1270 Bd Michele-Bohec
Blainville, Quebec J7C 5S4, Canada

11. Severability. If any provision of this Contract 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.

12. Modification. This Contract may only be modified upon written agreement of the Parties.

13. Assignment. Neither this Contract nor any of the rights or obligations of the Parties shall be assigned by either party without the written consent of the other.

14. 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 Contract, 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.

15. Rights and Remedies. The rights and remedies of the District under this Contract are in addition to any other rights and remedies provided by law. The expiration of this Contract 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.

16. 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 or liability beyond the current fiscal year.

IN WITNESS WHEREOF, this Construction Contract has been executed by the Parties as of the Effective Date.

SUPERIOR METROPOLITAN DISTRICT NO. 1

[Signature]

Mark Laxis, President

ATTEST:

[Signature]
Lydia Yecke, Secretary



CONTRACTOR

By:

[Signature]

STATE OF Quebec)
~~COLORADO~~)
COUNTY OF Canada) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 23rd day of Jan, 2023 by Omar Hammoud as President and CEO of APGN Inc.

My commission expires: 26 July 2024

(S E A L)

[Signature]

Notary Public
Commissioner for OATHS For Quebec
and Out Side of Quebec
Comm# 223373
Exp 26 July 2024

