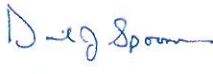


Memorandum

To: Doug Hasler
School Board Members

From: Dave Spooner 
Manager of Facilities

Date: August 3, 2017

Re: City of Duluth - Sand and Salt Materials Supply Agreement

Please find attached two copies of an agreement with the City of Duluth, to formalize our “informal” winter sand / salt materials agreement.

Due to difficulties the District had in storing appropriate quantities of sand and salt mixture for roadway and lot sanding, we entered into discussions with the City of Duluth to partner with the City and utilize their State Contract acquired sand and salt mix. These discussions and verbal agreement were finalized and we began this process in 2011. We did find this method to procure sand and salt to be effective and cost efficient compared to what we were paying for our small quantities that we used, along with the storage problems and building damage.

Overall, total annual cost depends on winter conditions, but for example last year we incurred a total material cost of \$31,891.90.

Recommendation:

I am recommending that the Duluth School Board enter into agreement with the City of Duluth, for Sand and Salt Materials to be provided to the District as needed at the defined cost as per attached agreement. This agreement can be cancelled by either party with proper notice as defined.

Attachments

**SALT/SAND MATERIALS
SUPPLY AGREEMENT
ISD 709**

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "City" and INDEPENDENT SCHOOL DISTRICT No. 709, an independent school district under the laws of the State of Minnesota, hereinafter referred to as "709".

WHEREAS, as part of its street maintenance processes, City purchases sand and salt materials suitable for treating ice and snow on its streets, causes those materials to be delivered to various storage sites in the City, which sites are known to 709, causes said materials to be mixed to a mixture determined by City to be appropriate for said purpose (said mixed sand and salt being hereinafter referred to as the "Materials") and stores the Materials at such sites in quantities it deemed appropriate for its needs; and

WHEREAS, 709 has need for lesser quantities of Materials from time to time which it has purchase from City in the past and which it wishes to continue to purchase from City, subject to the terms and conditions of this Agreement; and

WHEREAS, City is willing to continue to supply Materials to 709 and to load Materials onto trucks provided by 709, subject to the terms and conditions of this Agreement.

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

ARTICLE I

Sale of Materials

City hereby agrees that upon request of 709's staff, City will provide to 709 and will load onto trucks provided by 709 such quantity of Materials as is requested by 709 staff. The agreement to provide any quantity of Materials to 709 is subject to a determination by the Director of the City's Street Maintenance Division, in his or her sole discretion, that any such delivery will not result in the City not having enough Materials to meet its needs. In the event that said Director determines that any such delivery will result in the City not having enough Materials for its needs, whether at that time or in the foreseeable future, City shall have the right to refuse delivery of such Materials to 709.

ARTICLE II

Delivery

Materials delivered to 709 shall exclusively be loaded by City personnel onto trucks provided by 709 at a City storage site for Materials. 709 personnel shall not load or attempt to load Materials onto any means of conveyance. City will endeavor to have staff available to so load Materials between 8:00 A.M. and 4:30 P.M. Monday through Friday (except holidays) but the availability of such personnel to perform such service is not guaranteed.

ARTICLE III

Payment

709 hereby agrees to pay for the Materials delivered to it as follows:

1. City personnel loading Materials onto 709's trucks shall use a loader with a bucket capacity of approximately three (3) cubic yards.
2. City personnel loading Materials shall keep track of the number of bucket loads of Materials are placed on 709's trucks.
3. The parties agree that each cubic yard of Materials shall be deemed to weigh 1.45 tons.
4. City will charge 709 for Materials delivered to 709 based on the number of buckets placed on 709's trucks at a rate equal to 158% of the City's most recent costs of purchasing salt and sand from its supply sources for Materials. Upon the written request of 709, City will provide documentation supporting City's determination of its costs for purchase of salt and sand.
5. Within Ten (10) days of the end of any calendar month, City will send to 709 at the address hereinafter set forth an invoice stating the quantity of Materials delivered to 709 in said prior month and a statement of the amount owed by 709 to City for the cost of the Materials so delivered.
6. Within Fifteen (15) days of the transmission of said invoice to 709, 709 shall pay the amount owed to City.

ARTICLE IV

No Liability

Nothing herein shall be interpreted to create any obligation on the part of City to deliver Materials to 709 beyond that specifically herein set forth. Nor shall the failure, for any reason, of City to provide or deliver Materials to 709 create any liability on the part of City to 709 or to any third party whatsoever.

ARTICLE V

Force Majeure

Under the terms of this Agreement, neither the City nor 709 shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE VI

Term

This agreement may be terminated by either party on Thirty (30) days prior written notice to the other party with or without cause. In the event of such termination, except for the provisions of

Article IV above, this Agreement shall terminate in its entirety and shall be of no further force and effect.

Article VII

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid or deposited with a nationally recognized overnight courier service for next business day delivery to:

In the case of City:

City of Duluth
Office of the City Clerk
Room 326, City Hall
Duluth, MN 55802

In the case of 709:

Duluth Public Schools
Attn: Business Services
215 N. 1st Ave. E.
Duluth, MN 55802

ARTICLE VIII

Applicable Law

This Agreement together with all of its Articles, 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.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH, a Minnesota Municipal
Corporation

INDEPENDENT SCHOOL DISTRICT NO.
709, a Minnesota independent school
district

By: _____
Emily Larson
Its Mayor

By: _____
David Kirby its Board Chair
“Grantor”

Attest:

By: _____
Its City Clerk

Date: _____

Approved:

Countersigned:

City Attorney

City Auditor

Drafted by:
Robert E. Asleson
Assistant City Attorney
Room 410 City Hall
Duluth, MN 55802
(218) 730-5490