



Engineering & Public Works Department

SUBJECT: Contract with StormTrap, LLC

MEETING DATE: October 13, 2020

FROM: [Brigitte Berger-Raish](#), P.E. Director of Engineering and Public Works
[Dan Manis](#), P.E., Village Engineer

BUDGET IMPACT: See Budget Impact Section

Recommended Motion

Move to approve a contract in an amount not-to-exceed \$1,636,852 with StormTrap, LLC, Romeoville, IL, for the pre-purchase of pre-cast concrete units for Phase 2 of the Neighborhood Storage Project at Hibbard Park.

Background

At the September 22 Village Board meeting, the Village Board approved a motion to waive the competitive bid process for the purpose of negotiating a contract with StormTrap, LLC (StormTrap) for the purchase of a pre-cast concrete underground storage system for Hibbard Park. Construction is anticipated to begin in late January and be completed in June.

After reviewing seven different detention systems, it was determined that StormTrap would be the most suitable vault design for all three storage locations at Community Playfield, Hibbard Park and Thornwood Park. Benefits of the StormTrap vault system include:

- Ability to provide the required storage in the smallest construction footprint;
- Widely used in the Chicagoland area for similar underground storage projects;
- Superior to the other vault systems in the areas of longevity and performance; and
- Local contractor familiarity.

Similar to the first phase of the project at Community Playfield, Village staff and the consultants recommend pre-purchasing the vault directly from StormTrap instead of including the product in the construction contract. Pre-purchasing the material ensures the vault pieces will be available for construction in early 2021 and eliminates a contractor markup on the product.

Discussion

StormTrap provided a price proposal to the Village to supply the concrete vault pieces for \$1,586,852.00. The approval request also includes a contingency of \$50,000 if there are surcharges related to delivery times exceeding the one-hour provision to unload the pieces on the jobsite. To control this exposure, the construction contract will include detailed specifications outlining the contractor's obligation to unload the pieces as efficiently as possible.

In order to ensure the Village received a competitive price for the vault pieces, Christopher B. Burke Engineering Ltd. (CBBEL) researched pricing for other StormTrap projects. Of the last 13 StormTrap projects CBBEL has been involved with, the average price was \$307,000 per acre-ft of storage. The current proposal for Hibbard Park is \$158,000 per acre-ft. This is significantly lower than the average because of the cost efficiencies of the deeper vault as well as competitive pricing from StormTrap.

Budget Impact

The pre-purchase of the StormTrap product will be paid through a bond issuance planned for 2021.

Documents Attached

1. Proposal Agreement from StormTrap, LLC

Proposal Agreement

StormTrap, LLC
1287 Windham Parkway
Romeoville, IL 60446
Phone: 815-941-4549
Fax: 331-318-5347



Customer P.O. Number:	Date: 9/16/20
Purchaser Company Name: Village of Wilmette, IL Contact: Brigitte Berger Address: 711 Laramie City, ST, Zip: Wilmette, IL 60091 Phone: 847-853-7627 Fax: Email: bergerb@wilmette.com	StormTrap Contact Name: Kyle McCready Email: kmccready@stormtrap.com Phone: 815-546-9256
Project Name: Hibbard Park Contact: Address: City, ST, Zip: Wilmette, IL Phone: Email:	Terms Per Village of Wilmette contract *Pending Credit Approval
	Shop Drawings This proposal is based upon and relied upon the attached StormTrap layout (and noted design criteria) dated 8/29/20 . Any changes to the layout or design criteria will affect the below quoted price.

Delivery

Pieces will be delivered by Common Carrier with the installing contractor responsible for unloading at the job site. 263 total loads allowed. One hour per load is allowed for unloading. \$65.00 per hour for any time thereafter. The total loads quoted are based on all material being available at the time of delivery. The contractor is responsible for providing safe/adequate means of ingress and egress from the jobsite.

Seller to Furnish the Following Materials* Specified Below:

*Note: Prices include all necessary joint wrap and joint tape to complete the above stated project.

Description	Pieces	Max Pick Weight
15' DoubleTrap	520 Pieces / 32 Panels	23,500#

Prices do not include unloading, setting, or installing the system. Prices do not include any needed riser rings or frames, covers/grates, or any other material including geogrid or geoweb, when applicable. The purchasing contractor agrees to install or have the system installed by others in compliance with the installation specifications. Before any work begins, a preconstruction meeting must take place between StormTrap and the purchasing contractor.

TOTAL ORDER: \$1,586,852.00

Taxes not included

To Execute This Order Please Sign and Return Within 30 Days. Price Valid for 30 Days.

Accepted by: _____
Purchaser

Acknowledged by: **StormTrap, LLC**
Seller

Print Name/Title

Print Name/Title

Date:

Date:

Terms and Conditions: By signing this Proposal, the terms and conditions on the reverse side of this form apply to the foregoing Proposal, to any orders, quotations, proposals, sales or deliveries from StormTrap, LLC ("Seller") to Purchaser and are hereby incorporated by reference into any StormTrap Proposal to Purchaser. Any different or additional terms in any documents from Purchaser, including but not limited to, order acknowledgements, are objected to and rejected, are deemed to materially adhere these terms, and will not become part of any contract.



STANDARD TERMS AND CONDITIONS

Terms and Conditions. The following terms and conditions apply to the foregoing Proposal, to any orders, quotations, proposals, sales or deliveries from StormTrap, LLC ("Seller") to Customer and are hereby incorporated by reference into any Seller Proposal to Customer. Any different or additional terms in any documents from Customer including but not limited to order acknowledgements are objected to and rejected, are deemed to materially alter these terms, and will not become part of any contract.

Purchase Price and Payment Terms. Payment for all material and goods purchased under this Proposal or any orders, quotations, proposals, sales or deliveries from Seller (the "Materials"), as well as for freight or other services purchased, is Net 30 Days from date of invoice. A finance charge of 2% per month (24% per annum) will be assessed beyond that time period. Seller may submit periodic invoices for progress payments for the value of materials produced or incorporated in the work or stored on site or at any precaster's site, less previous invoice amounts paid. Customer will pay a deposit as shown on the Sales Quote before production will begin. Deposit will be applied to final invoice. Customer understands that payment obligation is unconditional – there are no pay-when-paid or retainage provisions applicable, and there are to be no amounts withheld, retained, or deferred pending payment by any third parties.

Taxes. Customer will be solely responsible for payment directly to taxing authority or reimbursement to Seller, when paid by Seller, of all sales, sales or similar taxes, and any duties or permits or any other fees imposed upon this transaction by any level of government whether due at the time of sale or later (excluding Seller's income taxes).

Delivery. Unless otherwise specified above, all prices are F.O.B. Customer's job site. Quoted lead times are subject to change at any time until order is placed by Customer and accepted by Seller. Shipping and delivery dates stated are approximate. If a Target Date for delivery is specified in the foregoing proposal, and Customer subsequently requests that Seller postpone, delay or defer shipment or delivery past the Target Date shall Seller may (a) invoice Customer (Net 30 Days) for materials as if the delivery had been made on the Target Date; (b) charge and periodically invoice Customer for storage, maintenance and security for the period between the Target Date and actual shipment and delivery; (c) charge and invoice Customer for extraordinary costs, production costs, charges or expenses incurred by Seller to meet the Target Date, and incurred by Seller as a consequence of the postponement, delay or deferral requested by Customer; and (d) adjust the schedule and defer production, shipment and delivery, without penalty, to allow Seller to meet its other pending manufacturing, shipment and delivery commitments.

Force Majeure. Seller will not be liable for any delay in performing or for partial or complete failure to perform hereunder if such delay or failure is due to fire, flood, explosion, Act of God, force majeure, accident, war, intervention of governmental authorities, strikes, labor disputes, material shortages, transportation delays, any act or omission of Customer, its agents or employees or any party retained by, through or under any of them, or any other cause similar or dissimilar which is beyond Seller's reasonable control.

Change Orders. Customer and Seller may agree in writing at any time to make additions, deletions or revisions in the Materials or services to be provided, and Seller shall not be obligated to make any such change without execution of a written change order signed on behalf of Seller by Seller's authorized representative and by Customer. If Seller commences work to implement a change order at Customer's request before price and time adjustments are agreed to in writing, Seller shall be entitled to reasonable compensation including profit and reasonably necessary time extensions to the schedule. In the event of any increase in the cost or time required for Seller's performance caused by conditions not reasonably foreseeable, force majeure events described above, any act or omission of Customer, its agents or employees or any party retained by, through or under any of them, or other causes not within Seller's reasonable control, the Purchase Price and schedule shall be equitably adjusted.

Acceptance. The Materials will be deemed accepted by Customer upon the earlier of (i) written acceptance, (ii) 5 days after delivery, unless Customer shall have notified Seller in writing of deficiency in the Materials, or (iii) commencement of beneficial use of the Materials. Upon such acceptance, payment of any unpaid balance of the purchase price will be due on the payment terms herein. Payment in full shall also constitute acceptance and waiver of all claims other than claims relating to the written warranty described below.

Confidential Engineering Data. The drawings and specifications of any Seller proposal or any quotation are confidential engineering data, and represent Seller's investment in engineering skill and development, all of which remain the property of Seller. Customer, its successors and assigns will neither use nor disclose any confidential information in any manner except as is required for the project or work contemplated by this Agreement. Seller maintains and reserves all copyrights, patents and intellectual property rights with respect to the Materials. All specifications and dimensions of proposal drawings are approximate, and are subject to changes during detailed engineering. Weights are approximate. Purchased materials and components referred to by trade-names or by manufacturer may be interchanged at the option of Seller with other materials and components of at least equal quality. All molds, dies, tools, special fixtures, jigs, patterns, plates and models used by Seller in manufacture or installation are and remain the property of Seller. After Seller receives an order from Customer, Seller will submit layout drawings to Customer, if required. Customer will check and verify such layout drawings reasonable promptness.

Marketing Materials. Customer agrees that Seller may use in Seller's website, brochures and other printed or electronic marketing materials, Customer's name and logos, and photographs or renderings of the project site and related area, including Customer's facility.

Warranty. Seller's standard written five year limited warranty will be provided separately on request, is available on our website at <http://stormtrap.com/warranty/> and is incorporated herein by reference. **SUCH WRITTEN LIMITED WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH THEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE. 5. THE LIMITED WARRANTY IS THE EXCLUSIVE REMEDY FOR CUSTOMER WITH RESPECT TO THE MATERIALS.** Customer must give written notice to seller of any defects within 30 days from the date that such defects were discovered or should have been discovered and in any event within 30 days after the last day of the applicable warranty period. Failure by Customer to give such timely written notice to Seller waives, releases and discharges Seller from all warranty claims relating to such defects.

Limitation of Liability. Customer agrees that in no event, whether as a result of a breach of contract or warranty, negligence, indemnity, statute or common law,

or any other cause, whatsoever, and regardless of the form of legal action or the theory of recovery, will Seller or its subcontractors or affiliates be liable for (i) consequential, indirect, economic, special, incidental, exemplary or punitive damages including, but not limited to, loss of production, profits or revenues, loss of use of the materials or any other property, cost of capital, cost of substitute materials, facilities or services, downtime costs or claims of customer's clients for such damages, even if Seller is advised of such risks, nor (ii) any losses, expenses or damages under any claim of any kind in excess of the Purchase Price to the extent actually paid to Seller for the Materials relating to the claim.

Risk of Loss; Insurance Coverage. If delivery is included in the Purchase Price, risk of loss passes to Customer when the Materials are delivered to the site. If delivery is not included in the Purchase Price, risk of loss passes to Customer upon delivery of any portion of the Materials to a carrier for shipment and Customer agrees to maintain insurance covering materials in transit. In addition, regardless of whether delivery is included in the Purchase Price, Customer agrees to maintain insurance, such as all-risk or builders risk insurance, covering Materials on site against loss by fire, theft or other hazard at least equal to the purchase price of the Materials (and other work and materials on site) until the purchase price is completely paid, and to provide Seller a certificate of insurance upon request.

Compliance With Codes. As government and industry codes, laws and standards may apply differently depending on Customer's use of the Materials, compliance with government and industry codes, laws and standards is solely Customer's responsibility.

Lien; Security Interest. Seller will protect Customer against any lien asserted against Customer's property for materials or services furnished by others under contract with Seller, provided that Customer makes the payments required under this Contract and provides Seller timely notice of any claims for lien. Customer acknowledges that Seller reserves all rights and remedies available to secure Seller's payment due Seller under this Agreement. Customer grants Seller a security interest in any and all Materials pursuant to this Agreement or any orders, quotations, proposals, sales or deliveries from Seller to Customer, until the purchase price is fully paid. Customer hereby authorizes filing of a financing statement evidencing the security interest.

Termination; Cancellation. If Customer defaults in its obligations hereunder or materially breaches this Agreement, including but not limited to Customer's failure to timely pay all amounts due hereunder, then, in addition to any other available remedies in equity or at law, Seller may terminate this Agreement upon notice and seek all other available remedies. If Seller agrees to permit Customer to return Materials purchased, Customer will pay a 25% restocking fee for returned Materials. If Customer cancels or repudiates this Agreement in whole or in part except as permitted hereunder, Seller shall, in addition to those remedies provided under applicable law including but not limited to the Uniform Commercial Code, be entitled to recover from Customer (1) the portion of the purchase price chargeable for work completed in manufacturing or delivering the Materials as of the date of termination (2) any direct liabilities, obligations, damages, and/or claims incurred by Seller in performing under this Agreement and (3) gross profit on the terminated portion of the order, equal to not less than fifteen percent (15%) of the unpaid portion of the purchase price. Nothing herein shall be construed to waive, limit or otherwise deprive Seller of any remedy available at law or in equity for Customer's cancellation or repudiation of this Agreement. Customer shall not have the right to reject specified, approved and delivered Materials unless the Materials are proven defective.

Costs of Collection; Indemnification. In the event Customer shall default in its obligations hereunder or materially breaches this Agreement, in addition to all other remedies, Customer shall be liable for Seller's costs of collection, including reasonable attorneys' fees, costs of collection, litigation costs, expert witness fees and any other costs associated with collection, whether or not suit is actually filed. Separately, to the fullest extent permitted by law, Customer also agrees to indemnify, defend and hold harmless Seller, its affiliates, successors and assigns from and against any liabilities, claims, demands, damages, losses and expenses (including attorney's fees) arising from any act or omission of Customer or its employees or agents, any party under Customer's direction or anyone acting on behalf of Customer, including but not limited to claims arising out of personal injury or death to any person (whether an employee of Customer or any other person) and damage to any property. Seller does not indemnify Customer.

Assignment; Waiver; Interpretation. Customer may not assign in whole or in part without written consent of Seller. Seller may assign its rights and/or obligations hereunder. Customer acknowledges that these terms and conditions, and Seller's proposal if any, constitute the entire agreement between Seller and Customer and supersede any prior agreements and representations. Customer acknowledges and agrees that any prior or contemporaneous promises, agreements, or representations, whether oral or written, or created through custom, usage, or course of dealing are also superseded by these terms and conditions. No waiver of any of these terms and conditions will be valid unless in writing and signed by an authorized representative of Seller. Waiver of any breach or default will not be deemed a waiver of any subsequent breach or default. Delivery of these terms and conditions constitutes either an offer or an acceptance by Seller. If these terms and conditions constitute an offer by Seller, Customer's acceptance shall be limited to these terms and conditions. If Customer has made an offer and if these terms contain different or additional terms or conditions than the terms or conditions of Customer's offer, then any acceptance of Customer's offer by Seller is expressly made conditional on assent by Customer to the additional or different terms or conditions hereof. Customer shall be bound by these terms and conditions. Any terms and conditions which are not enforceable are deemed severed only to the extent of such non-enforceability.

Notice. Notice under this Agreement will be deemed given (i) when sent by fax or electronic mail with electronic or other confirmation of receipt, or (ii) one business day after being sent by reliable overnight courier, or (iii) three business days after being placed in a postage prepaid envelope, registered or certified mail, and deposited with the U.S. Post office, properly addressed.

Governing Law and Venue. This Agreement and any dispute between the parties will be governed by the law of the State of Illinois and shall be litigated only in the Circuit Court of Grundy County, Morris, Illinois and Customer hereby consents to personal jurisdiction in said court.

Electronic Commerce. Subject to applicable Illinois and federal law, any data digitally signed and electronically transmitted shall be as legally sufficient as a written, signed, paper document exchanged between the parties, notwithstanding any legal requirement that the data be in writing or signed. A signature hereto or to any amendment, modification or change order hereto sent or delivered by facsimile or other electronic transmission shall be as legally binding and enforceable as a signed original for all purpose.

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