



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Guaranteed Maximum Price - Amendment 2 with Slayden Constructors, Inc.
for the Kellogg Creek Water Resource Recovery Facility Improvements Project

Purpose/Outcomes	Approval of Amendment #2 establishing the Guaranteed Maximum Price (“GMP”) required for construction of improvements to the Kellogg Water Resource Recovery Facility. The GMP construction will include installation of equipment purchased under Early Work Amendment No. 1 and construct additional improvements.
Dollar Amount and Fiscal Impact	Funds for the Kellogg Creek Water Resource Recovery Facility Improvements Project are budgeted in the FY 2017-18 budget and are budgeted in FY 2018-19 for an amount not-to-exceed a total amount of \$14,110,043 for the GMP Amendment.
Funding Source	Clackamas County Service District 1 FY 2017-18 Annual Budget, and WES FY 2018-19 budget. No General Funds are impacted.
Duration	July 2018 to July 2020
Previous Board Action/Review	On August 3 rd , 2017, the Board authorized an early work amendment #1 (“EWA #1”) to accelerate procurement of long-lead time equipment and early construction activities.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This project supports the WES Strategic Plan to provide partner communities with reliable wastewater infrastructure to serve existing customers and support future growth. 2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.
Contact Person	Greg Geist, Director – Water Environment Services – 503-742-4560

BACKGROUND:

The 40-year-old Kellogg Creek Water Resource Recovery Facility (“Kellogg Facility”) is in need of rehabilitation and upgrades. This work was delayed while Clackamas County Service District No. 1 (“District”) evaluated whether or not the facility would continue operations or be decommissioned. The Kellogg Facility will continue operations, and therefore, is in need of repair and refurbishment to bring it up to full operational capabilities.

The refurbishment of the Kellogg Facility encompasses several distinct project elements. Specifically, the GMP Amendment includes the following elements:

- Yard Piping
- Secondary Sludge Pump Station HVAC and Electrical
- Peak Wet Weather Flow Facilities

- Blower Building Work
- Utility and Back Up Power T2 and Switchgear
- Influent Pump Station
- Thickening Building Polymer and Water Upgrades
- Plant Water Pump Station
- Foul Air Duct Work

The Kellogg Creek WRRF improvements Project is being delivered employing the Construction Manager/General Contractor ("CM/GC") delivery method and will include procurement of all materials, equipment, and labor. In summer 2017, early work was authorized and is ongoing. EWA #1 allowed procurement of long lead time equipment and work to begin on elements considered critical to reliable operation of the facility. Concurrently, design work was completed on the remainder of the Project elements and this GMP provides funds for the construction phase of the Project. Cost of the design work was \$95,109 and EWA#1 cost was \$4,355,697. A preliminary GMP proposal received in September 2017 indicated that the cost of project would exceed the original engineer's estimate of \$13M. As the design developed over the past several years, cost estimates were not updated. When it became clear in Fall, 2017, that the cost of the refurbishment project would exceed previous estimates, WES staff worked to prioritize project elements and deferred all or part of three elements. Nonetheless, the GMP proposal received in December 2017 was higher than was anticipated. WES obtained an independent cost estimate and subsequently negotiated with the contractor to reduce the GMP to be more in line with the new estimate. The following adjustments were made:

- Mark-ups on non-craft labor will be reduced to be in compliance with the Agreement
- Equipment will be billed in compliance with the Agreement
- Owner's contingency is reduced to 7%
- Mark up on self-performed work increases from 7% to 11%.

Slayden Constructors, Inc. submitted their proposal for a GMP amount equal to \$18,560,759, which includes the pre-construction work and EWA #1. This amendment #2 for the construction phase of the Project will be for an amount not-to-exceed \$14,110,043, for which WES seeks board approval. District staff believe it is in the District's best interest to accept the proposal.

This amendment has been reviewed and approved by County Counsel.

RECOMMENDATION:

For these reasons, District staff recommends that the Board of County Commissioners, acting as the governing body of Clackamas County Service District No.1, approve the GMP Amendment for the Kellogg Creek Water Resource Recovery Facility Improvement Project for a not-to-exceed contract value of \$18,560,759.

Respectfully submitted,



Greg Geist, Director
Water Environment Services

Placed on the _____ agenda by Procurement.

CONSTRUCTION MANAGER/ GENERAL CONTRACTOR AGREEMENT
AMENDMENT #2
GUARANTEED MAXIMUM PRICE

This Amendment #2 (“Amendment #2”) to the Construction Manager/ General Contractor Agreement with an effective date of December 1, 2016 (“Agreement”) entered into between Clackamas County Service District No. 1, a county service district formed pursuant to ORS 451 (“District”), and Slayden Constructors, Inc., an Oregon corporation (“Contractor”).

Recitals

Whereas, the parties entered into the Agreement for the pre-construction phase of the Kellogg Creek Water Pollution Control Plant Improvements Project (“Project”), which was amended by Early Work Amendment #1 entered into on August 3, 2017 (“EWA #1”) to facilitate the procurement of long-lead time equipment and early construction activities;

Whereas, upon completion of 100% design, the Contractor provided a proposed Guaranteed Maximum Price (“GMP”) for completion of the Project in December 2017, which exceeded the design engineer’s estimate;

Whereas, the District obtained an independent construction cost estimate to evaluate the reasonableness of the GMP submitted by Contractor;

Whereas, the District and Contractor negotiated in good faith based on the independent cost estimate to arrive at a mutually agreed upon GMP outlined below;

Now therefore, the parties agree to the following:

Terms

1. **Purpose.** The purpose of Amendment #2 is to authorize the Contractor to provide all necessary Construction Services pursuant to Article 6 of the Agreement for the GMP specifically outlined herein.
2. **Guaranteed Maximum Price.** The Guaranteed Maximum Price, including the pre-construction work and EWA #1, is equal to **\$18,560,758.57**. Contractor shall be compensated for the construction phase of the project on a time and material fee basis with a not to exceed price of **\$14,110,042.13** (“Amendment #2 Price”), in addition to the early construction work under EWA #1. For work completed under the GMP, subsequent to EWA#1, Contractor shall be compensated at the agreed upon labor rates in Exhibit 1 attached hereto.

Pre-Construction Services	\$ 95,019.00
EWA #1	\$ 4,355,697.44
Amendment #2	\$ 14,110,042.13
Total GMP	\$ 18,560,758.57

3. **Contractor’s Fee for Self-Performed Work.** In accordance with Article 8.02 of the Agreement, the parties have negotiated a reasonable overhead and profit rate of eleven percent (11%) for self-performed work, not including work authorized under EWA #1.

4. **Contingency.** In accordance with Article 6.03.A.1 of the Agreement, the contingency amount is hereby set to seven percent (7%) of the Cost of Work Total identified in Exhibit 8 - Schedule of Values (\$836,786.58).
5. **Contractor's Contingency.** The parties hereby establish a separate Contractor's Contingency ("Contractor's Contingency") that is for the purpose of covering the cost of work for overages and other unforeseen costs. The Contractor's Contingency is hereby set at three percent (3%) of the Cost of Work Total identified in Exhibit 8 – Schedule of Values (\$358,622.82). The Contractor's Contingency shall be controlled by the Contractor, however, all unspent funds shall accrue to the benefit of the Owner. All references to "contingency" in the Agreement are not applicable to the Contractor's Contingency and are treated separate and distinct. Usage of the Contractor's Contingency is subject to the applicable markup rate for subcontracted work or self-performed work under the Contract Documents.
6. **Bond Requirements.** In accordance with Article 16.10 of the Agreement, Contractor shall provide a performance bond and payment security bond in the amount of the authorized GMP Price in Paragraph 2 above. Such bonds shall be provided on the forms in Exhibit 2, attached and hereby incorporated by reference.
7. **Authorized Construction Services.** Contractor shall provide all necessary Construction Services to complete the work outlined in the following documents listed in descending order of precedence, attached and hereby incorporated by reference:
 - 7.1. Guaranteed Maximum Price Specifications Volume 1, December 2017 (Exhibit 3)
 - 7.2. Guaranteed Maximum Price Drawings Volume 2, December 2017 (Exhibit 4)
 - 7.3. Guaranteed Maximum Price, Addendum No. 1, dated December 22, 2017 (Exhibit 5)
 - 7.4. Guaranteed Maximum Price, Addendum No. 2, dated January 16, 2018 (Exhibit 6)
 - 7.5. Guaranteed Maximum Price Proposal, dated June 2018 ("Proposal") (Exhibit 7). The Proposal is not intended to modify any of the existing terms and conditions of the Agreement, including, but not limited to, agreed upon fees and markups. Other than the assumptions, qualifications and clarifications section in the Proposal (which shall take precedence), to the extent that there is a conflict between the Proposal and the Agreement, the Agreement terms shall control.
 - 7.6. Guaranteed Maximum Price Schedule of Values (Exhibit 8)
8. **GMP Amendment #2 Contract Times.** Contractor shall complete all GMP Construction Services by the following Contract Times:
 - 8.1. Substantial Completion: June 12, 2020
 - 8.2. Final Completion: August 14, 2020
9. **EWA #1 Contract Times.** The Contract Times for work associated with Early Work Amendment #1 will be revised as follows:
 - 9.1 Substantial Completion: September 13, 2018
 - 9.2 Final Completion: October 13, 2018
10. **Liquidated Damages.** In accordance with Article 5.03 of the Agreement, time is of the essence for the completion of the Construction Services by the Contract Times outlined in Paragraph 5 above. Failure of Contractor to meet those Contract Times shall subject Contractor to the liquidated damages outlined in Article 5.03 of the Agreement.

