

October 24, 2019

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval of Early Work Amendment #1: Elevator Repair and Additional Preconstruction Phase Services for Hillside Manor Renovation

Purpose/Outcomes	Approval of Early Work Amendment #1: Elevator Repair and Additional Preconstruction Phase Services for Hillside Manor Renovation
Dollar Amount and Fiscal Impact	Amendment #1: Elevator Repair \$534,902.00 Additional Preconstruction Phase Services (Mechanical, Electrical, Plumbing): \$244,571.00
Funding Source(s)	4% Low Income Housing Tax Credits (LIHTC), Housing Preservation Funds (OHCS), Perm Loan, HACC Seller Financing
Duration	October 2019 through project closing
Previous Board Action	The Board was briefed on the Early Work Amendments during an "Issues" session on October 8, 2019
Strategic Plan Alignment	1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
Contact Person	Jill Smith, Executive Director, Housing Authority 503-742-5336
Contract Number	N/A

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests approval to execute Amendment One (1) – Early Work/Elevator Repair and Additional Preconstruction Phase Services between HACC and Walsh Construction for Construction Manager / General Contractor services for the Hillside Manor project.

Hillside Manor is a 100 unit, 9 story residential building, originally constructed in 1970, serving low income households with incomes between 0 - 80% Area Median Income (AMI). The building has been owned and operated by the Housing Authority of Clackamas County (HACC) since original construction. In December of 2017, HACC received approval from the US Department of Housing and Urban Development (HUD) to convert Hillside Manor to a project based Section 8 subsidy under the Rental Assistance Demonstration (RAD) program for Public Housing properties. RAD enables HACC to pursue funding through the Low Income Housing Tax Credit (LIHTC) program to leverage debt and other fund sources and complete renovations on the building.

On May 17th, 2018, the HACC Board approved the Housing Authority's request to utilize a Construction Manager / General Contractor (CM/GC) contract in the rehabilitation of the Hillside Manor. Pursuant to this decision, an RFP process was initiated by County Procurement in November 2018. Walsh Construction was selected as the CM/GC for the Hillside Manor project on February 18, 2019. Under the guidelines of the A133 contract for CMGC, negotiated collaboratively between Walsh Construction, County Counsel, and County Procurement, Early

Work Amendments are authorized while the final Gross Maximum Price (GMP) construction contract is finalized.

- Early Work Amendment 1 is for \$534,902.00 and authorizes Walsh Construction to hire the elevator contractor to begin their design and construction duties for the beginning phases of the elevator design, permitting, and mechanical components with long lead times.
- Amendment 1 for Additional Preconstruction Phase Services is for \$244,571.00 and authorizes Walsh Construction to hire the subcontractors necessary to perform design and construction duties for the beginning phases of plumbing, electrical, low voltage, mechanical, and engineering systems for seismic work.

The cost of the two amendments is expected to be paid through construction financing at construction closing in April of 2020. However, the total of both amendments exceed the \$150k threshold and therefore, need board approval for signature.

The rehabilitation of Hillside Manor is a vital part of the Housing Authority's development strategy in meeting its goal of creating 1,000 new units of affordable housing. Approval of Amendment 1 constitutes the County's binding commitment to complete this project and will allow the Hillside Manor Project to move forward on schedule.

All documents have been reviewed by Clackamas County Counsel.

RECOMMENDATION:

Staff recommends the approval of the Early Work Amendment with Walsh Construction. Staff further recommends authorizing Richard Swift, H3S Director to sign the Amendment on behalf of the Housing Authority Board.

Respectfully submitted,

Handwritten signature of Richard Swift in black ink, with the text "Richard Swift, H3S Deputy / For" written below it.

Richard Swift, Director
Health, Housing and Human Services

Attachments:

1. Early Work Amendment #1: Elevator Repair
2. Early Work Amendment #1: Additional Preconstruction Phase Services

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT AMENDMENT 1
FOR ADDITIONAL PRECONSTRUCTION PHASE SERVICES**

THIS AMENDMENT ("Amendment") is made and entered into by and between, Housing Authority of Clackamas County, (hereinafter referred to as the "Owner"), and Walsh Construction Co./Oregon (hereinafter referred to as the "Construction Manger"). The parties agree as follows:

1. To AMEND, per Section 4.1.4, the AIA Document A133-2009 (the "Agreement") executed July 2nd, 2019, to include the services described in Section 2 (below).
2. Additional Services to be Provided by the Construction Manager:

By appropriate written agreement, the Construction Manger shall retain the services of a properly licensed design professional ("Early Work Consultants") to design, in accordance with Section 3.12.10 of AIA Document A201-2017, the following elements of the Project ("Additional Services") listed below, which the parties anticipate will be incorporated into Architect's design of the Project.

- Mechanical
- Electrical
- Low Voltage
- Plumbing
- Fire Protection
- Piling Systems

3. Additional Consideration:

The Owner shall pay the Construction Manger a lump sum of \$244,571 for the Additional Services ("Additional Service Fee"), which sum shall be in addition to the Construction Manager's compensation for Preconstruction Phase services established in Section 4.1.2 of the Agreement. As adjusted by this Amendment, the total amount payable to the Construction Manger under the Agreement for Preconstruction Phase services is \$354,571.

4. Payments:

The Construction Manager agrees to defer payment of the Additional Service Fee until the earlier of (1) the date the Owner and Construction Manager execute the Guaranteed Maximum Price Amendment, or (ii) July 31st, 2020. If the Owner and Construction Manager execute the Guaranteed Maximum Price Amendment prior to July 31st, 2020, the Additional Service Fee will be included in the Guaranteed Maximum Price and paid as part of the first Application for Payment during the Construction Phase. If the Owner and Construction Manager do not execute the GMP Amendment prior to July 31st, 2020, the entire Additional Service Fee will be due and payable on August 15th, 2020.

5. Additional Terms and Conditions:

- a. The Owner's Architect shall provide criteria that describe the character, scope, relationships, forms, size and appearance of the Work designed as part of the Additional Services ("Performance Criteria"), including any materials and systems required and, in general, the quality levels, performance standards, layout, and requirements or criteria thereof. The Construction Manager is not responsible for the adequacy of the Performance Criteria and shall be entitled to rely on the completeness and accuracy of the information contained in the Performance Criteria. The Construction Manager shall require each Early Work Consultant to visit the site, coordinate its Additional Services with the services provided by the Owner's Architect, observe all conditions and systems at the site and relevant to the Additional Services for which they are responsible, correlate their observations with the Performance Criteria, and perform their work in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practices and the project conditions. If the Construction Manager, or any Early Work Consultant, believes that implementation of any Performance Criteria, or instruction received from the Owner, would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Construction Manager shall notify the Owner in writing.
- b. If, and as required in the jurisdiction where the Project is located, the signature and seal of each Early Work Consultant shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals they prepare. The Owner and the Architect shall be entitled to rely upon the

adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such Early Work Consultants, provided the Owner and Architect have provided the Performance Criteria pursuant to Section 5 a. The Owner will cause the Architect to review, approve or take other appropriate action on submittals prepared by Early Work Consultant.

- c. Upon request of Owner, the Construction Manager shall obtain from each of the Early Work Consultants and furnish to the Owner certifications with respect to the documents and services provided by such Early Work Consultants (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Performance Criteria, except to the extent specifically identified in such certificate; (ii) comply with applicable professional practice standards; and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.
- d. Nothing in this Agreement shall create any contractual obligation from the Owner to such Early Work Consultants not hired directly by the Owner.
- e. Construction Manager agrees to include in its agreements with its Early Work Consultants provisions requiring the Early Work Consultants to obtain and keep in effect, during the term of Agreement, Professional Liability Insurance covering any damages caused by their negligent acts, errors or omissions, with combined single limits per claim of no less than \$1,000,000. Claims-made based insurance shall be maintained for one (1) year beyond Substantial Completion of the Work. As evidence of the insurance coverage required by this Section 5 e, the Early Work Consultants shall furnish a certificate of insurance to the Owner.
- f. The parties agree that in no event shall any professional design liability of the Construction Manager to the Owner arising out of or relating to design professional services performed, or to have been performed, under this Agreement or the Project exceed the limits of any applicable design professional liability insurance maintained by the Early Work Consultants.

6. License

- a. Drawings, specifications, and other documents relating to the Additional Services and furnished by the Construction Manager, including those in electronic form, are Instruments of Service. The Construction Manager, the Early Work Consultants and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Construction Manager, the Early Work Consultants and any other person or entity providing services or work for any of them.
- b. Upon execution of the Guaranteed Maximum Price Amendment, the Construction Manager grants the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Agreement. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

7. Except as specifically amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Owner and the Construction Manager have executed this contract agreement as of the date and year last written below.

OWNER,
Housing Authority of Clackamas County

CONSTRUCTION MANAGER,
Walsh Construction Co./Oregon

By _____

By _____

Title _____

Title _____

Date _____

Date _____

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT EARLY WORK
AMENDMENT #1**

This Early Work Amendment #1 ("Amendment") to the below identified Agreement is made this October 10th, 2019 between Housing Authority of Clackamas County ("Owner") and Walsh Construction Co./Oregon ("Construction Manager").

WHEREAS the standard form of Agreement between the Owner and the Construction Manager as Constructor (A133-2009, as modified) is dated July 2nd, 2019 ("Agreement") and governs the Work to be furnished to the Owner by the Construction Manager on the Hillside Manor project ("Project");

AND WHEREAS the Owner and the Construction Manager (collectively, the "Parties") wish to perform certain portions of the Work prior to the execution of the Guaranteed Maximum Price Amendment;

NOW, THEREFORE, in consideration of mutual promises and benefits, the Parties agree to the following:

1. The Contractor shall perform the following portions of the Work, pursuant to Section 2.1.10 of the Agreement;

Execution of a subcontract (attached hereto) for \$500,442 with Otis Elevator Company ("OTIS") for elevator modernization.

2. Subject to Section 2.1.10 of the Agreement, the Early Work Price is a lump sum of \$534,902, payable as follows.
 - 35% of the Early Work Price is due and payable upon execution of this Early Work Amendment.
 - 35% of the Early Work Price is due and payable on 4/1/2020.
 - The balance of the Early Work Price will be paid via the Application for Payment process established in Article 9 of AIA Document A201-2017.
3. The Early Work Price is comprised of the following.
 - \$500,442 – Subcontract Sum
 - \$18,767- Fee
 - \$8,100 - Insurance
 - \$3,665 - Bond
 - \$3,929 – Student Success Act Tax (House Bill 3427)
4. Owner consents to the award of the subcontract to OTIS pursuant to Section 5.2.3.10 of AIA Document A201-2017. As required by OAR 137-049-0690(5)(k)(B), written justification is attached hereto and acknowledged as sufficient by Owner.

This Amendment may be executed in separate counterparts, each of which so executed and delivered shall be deemed an original, and all of which taken together shall constitute one agreement between Parties.

Except as specifically amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

**Housing Authority of
Clackamas County**

**Walsh Construction
Co./Oregon**

Signature

Printed Name

Date
