



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with Pearce Moody Construction Company LLC for the
Sierra Case- West Storm Main (Contemporaneous Development)

Purpose/Outcomes	Execution of the contract between Water Environment Services and Pearce Moody Construction Company LLC for the Sierra Case- West Storm Main (Contemporaneous Development)
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$519,089.00
Funding Source	WES funds 649-01-20100-481010-P642277
Duration	Contract execution through December 30, 2020.
Previous Board Action	None.
Strategic Plan Assignment	This project aligns with the following WES initiatives: - The project would complete the final section of a regional storm system that was constructed 20 years ago.
Counsel Review	September 16, 2019
Contact Person	Ron Wierenga, WES Tech Division Manager, 503-742-4581 Leah Johanson, Civil Engineer, 503-742-4620

BACKGROUND:

WES requested use of the Contemporaneous Development Exemption to contract with Pearce Moody Construction Company LLC to construct approximately 400 feet of 60-inch reinforced concrete storm pipe in conjunction with the Hettervig Industrial Warehouse Project at 16760 SE Robert Avenue in Clackamas for an amount not to exceed \$519,089.00. The project would complete the final section of a regional storm system that was constructed 20 years ago. The recent sale of the property and the proposed industrial warehouse development on the site affords WES the opportunity to complete this important project while the site redevelopment is taking place. The exemption allows WES to contract with a developer to perform certain construction work including public improvements, minor alterations or repairs.

In order for a construction project to qualify for this exemption, the department director requesting the exemption must show that the following requirements are met:

1. **The Construction work would occur adjacent to, or within close proximity of, the Person's existing or planned project:** The Developer is currently constructing a 53,600 square-foot industrial warehouse facility/office and parking lot at 16760 SE Robert Avenue in Clackamas. A partially completed regional storm system currently runs down both the east and west sides of the property. The proposed project will connect the two systems by running a 60-inch pipe across the subject property prior to the construction of the industrial warehouse project.

2. **The Contracting Agency has identified the Construction work through one of the following methods:**
 - Upon a recommendation by the Director of the Department:** The WES Director recommends installation of this storm pipe in conjunction with the industrial development project because it was the original intention of constructing the existing regional storm system and would eliminate a temporary storm system outfall that currently discharges to the Clackamas River above Clackamas River Water's drinking water intakes.
3. **The Person engaged, or planning to engage, in the development project is willing and able to perform the Construction work:** Pearce Moody Construction Company LLC acting as the agent of the developer/property owner is willing and able to enter into a contract with WES to perform the work. The property owner has also consented to the project.
4. **Contracting Agency has sufficient funds to complete the Construction work:** WES has sufficient funds in the 2019-20 surface water construction fund budget. The project is not identified in the budget because the opportunity recently arose as the site is currently developing. However, WES has funding available in the construction fund from other projects that have been delayed.
5. **The use of this class exemption will result in cost savings and efficiencies as a result of the Person's equipment or other resources, including engineering or other personal services, being present or utilized for project work adjacent to, or within close proximity of, where Contracting Agency desires the Construction work to take place:** The installation of the storm pipe on the subject property prior to the construction of the industrial warehouse project results in efficiencies for WES related to project design and construction management services provided by the developer's project manager and engineer, who are familiar with the site and able to utilize their current information and planning work to most efficiently design the pipe layout. In addition, easements can be negotiated and dedicated before building and utility conflicts occur in the future.

From a cost standpoint the proposed pipe alignment across the subject property at 400 feet is the shortest feasible route to connect the east and west storm system segments in order to make the regional system functional. Alternative pipe alignments to the north, likely under roadways including Jennifer St and Robert Ave, would be between 650 and 1100 feet in length, thus would require more pipe segments and manholes to complete at a higher material and installation cost. In addition, there would be traffic disruptions and delays to install the pipe under the roadways, in addition to additional costs related to digging up and replacing the roadway. Partnering with the developer to complete pipe installation just prior to site redevelopment allows for the most efficient and cost effective project of the alternatives proposed.

6. **The use of this exemption is in the public's best interest:** The project itself is in the public's best interest because it will complete a regional storm system project that will eliminate a temporary outfall location and relocate the discharge to below the Clackamas River Water's drinking water intakes. Using the exemption to install the storm pipe is in the public's best interest because installing it now will eliminate future road impacts and delays during construction, in addition to potential private property impacts for alternative

routes other than in public rights-of-way. Furthermore, the cost savings enable WES to provide this surface water management service at a lower cost to our rate payers.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and Pearce Moody Construction Company, LLC for the Sierra Case- West Storm Main project.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the BCC Agenda 9-26-19 by Procurement.



**WATER ENVIRONMENT SERVICES
PUBLIC IMPROVEMENT CONTRACT
Contract #1849**

This Public Improvement Contract (the "Contract"), is made by and between Water Environment Services ("WES"), a political subdivision of the State of Oregon, hereinafter called "Owner", and **Pearce Moody Construction Company LLC**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties.

Project Name: **Sierra Case- West Storm Main** ("Project")

1. **Contract Documents.** This Contract shall consist of the following documents ("Contract Documents"), hereby incorporated by reference, and are listed in descending order of precedence:
 - A. This Public Improvement Contract
 - B. Clackamas County General Conditions for Public Improvement Contracts (dated 11/1/2017) ("General Conditions")
 - C. Exhibit A- Project Specifications and Project Drawings
 - D. Exhibit B- Vendor's Quote
 - E. Exhibit C- Performance and Payment Bonds

2. **Contract Price.** The Owner will compensate the Contractor for Work on a time and material basis at the rates outlined in Exhibit B and subject to a maximum not-to-exceed price of \$ _____; or in the firm, fixed-price amount of **five hundred nineteen thousand eighty-nine dollars (\$519,089.00)**; in accordance with the requirements of the General Conditions for the performance of all Work described and reasonably inferred from the Contract Documents. If the Project is done on a time and materials basis, the Contractor's listing of wage rates, material unit costs and overhead charges for the Work is attached to this Contract.

3. **Scope of Work.** This Project consists of the Scope of Work ("Work") as described in Exhibit A.

4. **Representatives.** Contractor has named Justin Pearce as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicated below (check one):

 Unless otherwise specified in the Work, the Owner designates Leah Johanson as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

 Name of Owner's Authorized Representative shall be submitted by owner in a separate writing.

5. **Contractor Key Persons.** The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized,

further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Justin Pearce shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

- 6. Contract Dates.** The following critical dates are hereby set for this Project. Time is of the essence.
- A. COMMENCEMENT DATE: Upon Contract Execution
 - B. SUBSTANTIAL COMPLETION DATE: June 30, 2020
 - C. FINAL COMPLETION DATE: December 31, 2020

7. Minimum Wage Rates. (Check one of the following):

Prevailing Wage Rates requirements do not apply to this Project because the maximum compensation for all Owner-contracted Work does not exceed \$50,000.

Prevailing Wage Rates requirements apply to this Project because the maximum compensation for all Owner-contracted Work is more than \$50,000. Contractor and all subcontractors shall comply with the provisions of ORS 279C.800 through 279C.870, relative to Prevailing Wage Rates and the required public works bond, as outlined in Sections C.1, C.2, and G.2.3 of the General Conditions. The Bureau of Labor and Industries (BOLI) wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Contract:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, July 1, 2019, which can be downloaded at the following web address:

http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx

The Work will take place in Clackamas County, Oregon

- 8. Tax Compliance.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle Owner to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Owner's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Owner shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and Owner may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

9. Required Terms. In addition to the terms and conditions contained in this Contract and the Contract Documents, the following terms and conditions are required by Oregon law:

- A. If the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this contract as the claim becomes due, the proper officer representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the Contractor by reason of the contract.
- B. If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- C. If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- D. The Contractor shall include in each subcontract those provisions required under ORS 279C.580.
- E. For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

10. Insurance Certificates and Required Performance and Payment Bonds.

- 10.1 In accordance with Section G.3.5 of the General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County and the Owner as additional insureds. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.
- 10.2 In accordance with Section G. of the General Conditions, Contractor shall furnish performance and payment bonds, on the bond forms furnished by the Owner, and in a sum equal to the Contract Price.

11. Execution and Counterparts. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

12. Integration. The Contract Documents constitute the entire agreement between the Parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

13. Compliance with Applicable Law. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

14. Contractor Data.

**Pearce Moody Construction Company LLC
615 Abbott Road
Walla Walla, Washington 99362**

Contractor CCB # 213120 Expiration Date: 02/7/2021
Oregon Business Registry # 1519767-93 Entity Type: FLLC State of Formation: Washington

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Pearce Moody Construction Company LLC

Water Environment Services

Authorized Signature Date

Chair Date

Name / Title (Printed)

Approved as to Form:

County Counsel Date

EXHIBIT A
PROJECT SPECIFICATIONS, PROJECT DRAWINGS

EXHIBIT B
VENDOR'S QUOTE

EXHIBIT C
PERFORMANCE AND PAYMENT BONDS