



Gregory L. Geist
Director

June 9, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Amendment No. 1 to the Agreement between Clackamas County Service District No. 1 and MWH Americas, Inc. for Professional Engineering Services for the Tri-City Water Pollution Control Plant Blower Upgrades Project

Purpose/Outcomes	Replace failing blowers with proven technology to improve reliability and ensure stable operation of the treatment system.
Dollar Amount and Fiscal Impact	Funding for professional engineering services is available in the FY2015-16 budget and funding will be requested in the FY2016-17 budget. Amendment No.1 increases the original agreement by \$54,488.00 for Clackamas County Service District No. 1 and \$23,352.00 for the Tri-City Service District for a new total agreement amount from \$150,000 to a not to exceed amount of \$227,840.00.
Funding Source	Clackamas County Service District No.1 and Tri-City Service District FY 2015-16 and 2016-17 annual budgets
Duration	June 2, 2016 to June 30, 2017
Previous Board Action/Review	None
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This project supports the WES Strategic Plan to provide wastewater and storm water infrastructure necessary to support partner communities and economic development over the next 20 years. 2. This project supports the County Strategic Plan to build a strong infrastructure.
Contact Person	Randy Rosane PE, Project Manager – Water Environment Services – 503-742-4573
Contract No.	P112160

BACKGROUND:

The HSI HT-Series Turbo blowers provided as part of the Tri-City Water Pollution Control Plant Phase I Expansion were installed in April 2011 to serve the existing conventional activated sludge (CAS) treatment system for the Tri-City Service District (“TCSD”) and a new membrane bioreactor (MBR) treatment system constructed by Clackamas County Service District No.1 (“CCSD#1”).

These critical pieces of equipment move large volumes of air into the treatment process and are essential for plant operations. The Turbo blowers were chosen because of their high energy efficiency ratings. However, the blowers experienced significant problems immediately upon installation, leading to TCSD and CCSD#1 requesting and receiving a warranty extension from

April 2011 to April 2016. Since that time the HSI blower manufacturers were bought out by Atlas Copco.

Seeing that the blower reliability issues were not improving and that the end of the warranty period was approaching, TCSD and CCSD#1 staff sought an independent review of the blower situation. MWH Americas, Inc. completed an evaluation of the existing blower's performance in February 2015 and determined that "Long-term operation of Turbo blowers is not tenable. There is evidence to suggest the Turbo blower performance will worsen, not improve" and "The extended period of time the CAS and MBR treatment trains must operate without suitable standby capacity is an unacceptable risk for potential effluent discharge violations". The blowers have continued to be unreliable since they were installed and the warranty has expired.

On April 21, 2015 the Director of Water Environment Services executed an agreement between Clackamas County Service No.1, the Tri-City Service District and MWH Americas Inc. to design, prepare bid documents and provide services during construction to replace the failing blowers for an amount not to exceed \$150,000.

The design was completed and bid in January 2016. The low bidder for construction is Stettler Supply Company for an amount not to exceed \$1,581,085.00.

During construction, but prior to ordering the replacement blowers, Atlas Copco came to the plant and offered to replace the blowers at no cost to TCSD and CCSD#1 and provide a temporary blower for back-up during redesign and manufacturing of the replacement blowers. Stettler has stopped work while we redesign the project. Once the redesign is complete TCSD and CCSD#1 will negotiate a deductive change order to the Stettler Construction contract eliminating the blowers from their contract with TCSD and CCSD#1.

TCSD and CCSD#1 have negotiated Amendment No.1 with MWH Americas, Inc. for redesign and extended services during construction for an amount not to exceed \$54,488.00 for CCSD#1 and \$23,352.00 for TCSD for a total not to exceed amendment of \$77,840.00.

RECOMMENDATION:

TCSD and CCSD#1 staff recommend the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1, approve and execute Amendment No.1 to the Agreement between Clackamas County Service District No. 1, the Tri-City Service District and MWH Americas, Inc. for an amount not to exceed \$227,840.00.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

**AMENDMENT No. 1
TO PROFESSIONAL CONSULTING SERVICES AGREEMENT
FOR THE TRI-CITY WATER POLLUTION CONTROL PLANT
BLOWER UPGRADE PROJECT**

This AMENDMENT NO. 1 to the PROFESSIONAL CONSULTING SERVICES AGREEMENT (this “Amendment No. 1”) is made and entered into on the ____ day of _____ 2016, by and between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and the TRI-CITY SERVICE DISTRICT, county service districts formed under ORS 451 (“Districts”), and **MWH AMERICAS, INC.**, a California corporation (“Consultant”), for performing professional services for the TRI-CITY WATER POLLUTION CONTROL PLANT BLOWER UPGRADE PROJECT, hereinafter referred to as the “Project.”

WHEREAS, the parties entered into that certain Agreement to Furnish Professional Consulting Services dated April 21, 2015 to assist the Districts with the design and development of bid documents to replace the existing blowers that serve the Conventional Activated Sludge System and the Microbiological Reactor treatment process systems (the “Agreement”); and

WHEREAS, the parties desire to continue and extend the services to accommodate unplanned and necessary work to modify the design and specifications based on changes to the project.

NOW, THEREFORE, for good and sufficient consideration, the parties hereby agree that:

1. To reflect an increase in total compensation by \$77,840.00, the Agreement’s, paragraph 5.1.1 is hereby replaced in its entirety with:

5.1.1 The DISTRICTS agree to pay the CONTRACTOR on a time and materials basis with a not-to-exceed amount equal to TWO HUNDRED TWENTY-SEVEN THOUSAND EIGHT HUNDRED FORTY 00/100 dollars (**\$227,840.00**) (the “Maximum Amount”) for services billed monthly. Notwithstanding anything else to the contrary herein, no changes in the Maximum Amount shall be made without prior written approval of the DISTRICTS.

2. To reflect the addition of unplanned and necessary work to modify the design and specifications based on changes to the project, Exhibits A and B are hereby supplemented with the following:

Exhibit A (Amended) and Exhibit B (Amended) attached hereto and incorporated therein.

3. To reflect the changes in state tax law, the following section is inserted in Article 3 – Consultant’s Responsibilities:

3.6 Compliance with Tax Law

3.6.1 The CONTRACTOR shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. 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 DISTRICT 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 DISTRICT setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DISTRICT 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 DISTRICTS may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

3.6.2 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

4. The DISTRICTS and the CONTRACTOR ratify the remainder of the Agreement and affirm that no other changes are made hereby.

In witness thereof, the parties execute this Amendment No. 1 as of the date set forth above.

MWH AMERICAS, INC.
806 SW BROADWAY, STE 200
PORTLAND, OREGON 97123

CLACKAMAS COUNTY BOARD OF COUNTY
COMMISSIONERS Acting as the Governing Body
of the TRI-CITY SERVICE DISTRICT by:

Authorized Signatory

Chair

Date

Date

Federal Tax ID Number

CLACKAMAS COUNTY BOARD OF COUNTY
COMMISSIONERS Acting as the Governing Body
of CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

Chair

Date

Recording Secretary