



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #1/Renewals #4 and #5 to the
Contract Documents with Portland Engineering, Inc. to Furnish
Professional Services to the Tri-City Service District
for the Instrumentation and Control Systems Integrator of Record

Purpose/Outcomes	Approval of this amendment/renewal will provide continued Programmable Logic Controller (PLC) and Human Machine Interface (HMI) programming, instrumentation, hardware, software, telemetry and other services related to wastewater treatment and conveyance operations to standardize and maintain telemetry system for the Tri-City Service District.
Dollar Amount and Fiscal Impact	This renewal of the agreement is for an amount not to exceed \$600,000 over the remaining two years, with an annual not to exceed amount of \$300,000 (\$150,000 from the Tri-City Service District and Clackamas County Service District No. 1 each). The cumulative contract total including this renewal is \$1,800,000 over the entire 6 year term of the agreement.
Funding Source	Tri-City Service District Operating Funds. No General Funds impacted.
Duration	Renewed for two (2) years until June 30, 2018
Previous Board Action/Review	BCC Consent Agenda 03072013 VI. 2.
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	Michael Trent, WES Wastewater Operations Manager, 503-557-2804
Contract No.	W110432

BACKGROUND:

On March 7, 2013, the Board of County Commissioners approved a one year contract between the Tri-City Service District (“District”) and Portland Engineering, Inc. (“PEI”) with the option for five potential one-year renewals.

The telemetry systems monitor and control treatment and collection system operations and are continually developed, upgraded, and added to in order to keep current with technology and operational adjustments.

In 2013, to achieve standardization across systems and plants, it was necessary to create a short list of firms that would be allowed to work on all telemetry systems and to select one of these firms to act as the overall Instrumentation and Control Systems Integrator of Record. Professional firms were invited to submit their qualifications demonstrating both their ability to work on telemetry systems and to qualify as the system integrator of record, in accordance with local contract review board rules. The District selected Portland Engineering, Inc. as the most qualified to serve as Systems Integrator of Record and work on telemetry systems.

Since 2013, projects have been designed and completed to gain greater operational efficiencies by standardizing these systems across the District and Clackamas County Service District No. 1. The projects are ongoing and continue to improve and enhance our control and communication systems. In addition, energy efficiency and cost reductions have been realized with the use of these services for energy related projects. The District would like to continue this important work through the end of the contract term in 2019 by seeking the BCC's approval for the remainder of the renewal terms eligible under this agreement.

This amendment/renewal has been reviewed and approved by County Counsel.

RECOMMENDATION:

District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of the Tri-City Service District, approve Amendment #1/Renewals #4 and #5 to the Contract Documents with Portland Engineering, Inc. to Furnish Professional Services to the Tri-City Service District for the Instrumentation and Control Systems Integrator of Record.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the **September 15, 2016** agenda by Purchasing.

**AMENDMENT #1 / RENEWALS #4 AND #5 TO THE CONTRACT DOCUMENTS WITH PORTLAND
ENGINEERING, INC. TO FURNISH PROFESSIONAL SERVICES TO CLACKAMAS COUNTY
SERVICE DISTRICT NO. 1 AND TRI-CITY SERVICE DISTRICT FOR INSTRUMENTATION AND
CONTROL SYSTEMS INTEGRATOR OF RECORD**

This Amendment #1, when signed by **PORTLAND ENGINEERING, INC.** and the Board of County Commissioners, Acting as the Governing Body of Clackamas County Service District No. 1 and Tri-City Service District (Districts), will become part of the contract documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

WHEREAS, the Contractor and Districts entered into those certain contract documents for the provision of services dated **MARCH 7, 2013**, as may be amended;

WHEREAS, the Contractor and Districts desire to amend the Contract pursuant to this Amendment; and

NOW, THEREFORE, the Districts and the Contractor hereby agree that the Contracts are amended as follows:

ADD
RECITALS

Renew the contract for two years from July 1, 2016 through June 30, 2018. This renewal covers the remaining renewal years four and five allowed under this contract.

ARTICLE 5 – PAYMENTS TO ENGINEER

5.1 Compensation

Add the new Billing Rate Sheet per Attachment “A”. The total annual renewed contract amount is on a time and materials basis and is not to exceed \$300,000.00 per year. The total contract amount is not to exceed \$1,800,000.00.

Add the following Tax Law Language:

6.27 Laws, Regulations and Orders, and Tax Law Covenant

6.27.1 The CONTRACTOR at all times shall observe and comply with all federal and state laws and lawful regulations issued there under and local bylaws, ordinances, regulations and codes which in any manner affect the activities of the CONTRACTOR under this Contract, and further shall observe and comply with all orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having any jurisdiction or authority over such activities of the CONTRACTOR.

6.27.2 The 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. Any violation shall entitle the COUNTY 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 the CONTRACTOR, in an amount equal to the COUNTY’s setoff right, without penalty; and
- c. Initiation of an action of proceeding for damages, specific performance, declaratory or injunctive relief. The COUNTY shall be entitled to recover any and all damages suffered as the result of the 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 the COUNTY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

6.27.3. 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 the CONTRACTOR, to the CONTRACTOR's property, operations, receipts, or income, or to the CONTRACTOR's performance of or compensation for any work performed by the CONTRACTOR;
- c.** Any tax provisions imposed by a political subdivision of this state that applied to the CONTRACTOR, or to goods, services, or property, whether tangible or intangible, provided by the CONTRACTOR; and
- d.** Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

CHANGE

ARTICLE 6 – GENERAL CONDITIONS

Amend in the following Termination Language:

6.1 Termination Language

6.1.1 This Contract may be terminated for the following reasons:

- 1.** This Contract may be terminated at any time by mutual consent of the parties, or by DISTRICTS for convenience upon thirty (30) days' written notice to the CONTRACTOR;
- 2.** The DISTRICTS may terminate this Contract effective upon delivery of notice to CONTRACTOR, or at such later date as may be established by the DISTRICTS if:
 - a.** Federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the DISTRICTS is prohibited from paying for such work from the planned funding source; or
 - b.** Any license or certificate required by law or regulation to be held by the CONTRACTOR to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- 3.** This Contract may also be immediately terminated by the DISTRICTS for default (including breach of Contract) if:
 - a.** The CONTRACTOR fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or
 - b.** The CONTRACTOR fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger the performance of this Contract in accordance with its terms, and after receipt of notice from the DISTRICTS, fails to correct such failure within ten (10) business days;
- 4.** If sufficient funds are not provided in future approved budgets of the DISTRICTS (or from applicable federal, state, or other sources) to permit the DISTRICTS in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, the DISTRICTS may terminate this Contract without further liability by giving the CONTRACTOR not less than thirty (30) days' notice.

ORIGINAL CONTRACT AMOUNT	\$300,000.00
RENEWALS #1, #2, AND #3	\$900,000.00
AMENDMENT #1/RENEWALS #4 & #5	\$600,000.00 Language Additions / Changes
TOTAL NOT TO EXCEED	\$1,800,000.00
CONTRACT AMOUNT	

Except as set forth herein, the County and the Contractor ratify the remainder of the Contract and affirm that no other changes are made hereby.

Portland Engineering, Inc.
 2020 SE 7th Avenue, suite 200
 Portland, OR 97214

Clackamas County Board
 of Commissioners Acting as the Governing Body of
 the Clackamas County Service District No. 1 by:

 Authorized Signature

 Chair

 Name / Title (Printed)

 Recording Secretary

 Date

 Date

 Telephone Number / Fax Number

Clackamas County Board of Commissioners
 Acting as the Governing Body of the Tri-City
 Service District by:

 306020-80

 Oregon Business Registry Number

 Chair

 DBC Oregon

 Entity Type / State of Formation

 Recording Secretary

 Date

APPROVED AS TO FORM:

 County Counsel

 Date