

RESOLUTION NO. 2023 - 21

A Resolution approving the award of a Construction Project to J.W. Fowler, Inc. for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10, and authorizing a construction contingency.

RECITALS:

Whereas, At 2:00 PM on April 25, 2023, 3 bids were received, opened and publicly read for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project No. 2019-10, and

Whereas, The bid from J.W. Fowler, Inc, in the amount of \$18,248,000, met all of the bid requirements and should be considered the lowest responsive bid, and

Whereas, Project funding is included in the adopted FY 22/23 through FY 24/25 Wastewater Capital Fund (77) budget for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10, and

Whereas, Additional costs are expected as construction progresses and budget authorization for a construction contingency is required, and

Whereas, A construction contingency in the amount not to exceed five-percent of the construction contract will be reserved for this contingency.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MCMINNVILLE, OREGON, as follows:

1. That entry into a construction contract with J.W. Fowler, Inc. for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10, in the amount of \$18,248,000 is hereby approved.
2. The City Manager is hereby authorized and directed to execute the contract with J. W. Fowler, attached hereto as **Exhibit A**.
3. The City Manager is authorized to execute construction contract modifications and change orders for an amount not to exceed \$900,000 for a total Purchase Order of \$19,128,000.
4. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 9th day of May 2023 by the following votes:

Ayes: Geary, Menke, Chenoweth, Peralta, Garvin

Nays: _____

Approved this 9th day of May 2023.

MAYOR

Approved as to form:


City Attorney

Attest:


City Recorder

EXHIBIT:

- a. Agreement, SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10

Exhibit A

Agreement, SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10

Resolution No. 2023-21

AGREEMENT

THIS AGREEMENT is by and between the City of McMinnville, Oregon, a municipal corporation (Owner) and J.W. Fowler, an Oregon corporation, (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. WORK
 - 1.1. Contractor shall complete the Work as specified or indicated in the Contract Documents entitled Solids Treatment Capacity Improvements, Project 2019-10.
 - 1.2. The Work under this Contract will consist of, but is not limited to: Providing all labor, materials, and equipment necessary to construct a new ATAD digestion facility, including procurement of equipment package and construction of ATAD, SNDR and support spaces; replacing the existing odor control system; replacing the thickened sludge pumping system in the Headworks basement; replacing the Headworks PLC; and associated systems, including electrical and instrumentation and control and other appurtenances necessary to complete the Work and to provide a complete and functional system constructed in accordance with the Contract Documents.
2. ENGINEER
 - 2.1. The Project has been designed by Jacobs (Engineer), who is to act as Owner's representative, assume duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.
3. CONTRACT TIMES
 - 3.1. Time of the Essence: Time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
 - 3.2. Days to Achieve Substantial Completion and Final Completion and Payment:
 - 3.2.1. The Work shall be substantially completed within 640 calendar days from the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 670 calendar days after the date when the Contract Times commence to run.

3.3. Liquidated Damages:

3.3.1. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph Contract Times above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$1,600 for each day that expires after the time specified herein for Substantial Completion until the Work is substantially complete.

4. CONTRACT PRICE

4.1. Owner will pay Contractor for completion of the Work in accordance with the Contract Documents the amount set forth in the conformed Bid Forms, which are included as an attachment to this Agreement.

5. PAYMENT PROCEDURES

5.1. Submittal and Processing of Payments: Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.2. Progress Payments and Retainage: Owner will make progress payments on account of the Contract Price on the basis of Contractor's Application for Payment on the date of each month as established in the preconstruction conference during performance of the Work as provided herein. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.05 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided in the General Requirements.

5.2.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.01 of the General Conditions:

5.2.1.1. Ninety-five percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain

satisfactory to them, there will be no additional retainage;
and

5.2.1.2. Ninety-five percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

5.2.2. In lieu of retainage, and at the Contractor's option, provisions may be made as provided in ORS 279C.560 for either depositing with Owner or in a bank or trust company, bonds or securities for all or any portion of the retainage in a form acceptable to Owner. Interest on such bonds or securities shall accrue to Contractor. Costs incurred by Owner as a result of this option will be deducted from Contractor's final payment.

5.2.3. Upon Substantial Completion, Owner will pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer will determine in accordance with Paragraph 15.01.C.6 of the General Conditions and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

5.3. Final Payment:

5.3.1. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner will pay the remainder of the Contract Price as recommended by Engineer as provided in Paragraph 15.06.

6. INTEREST

6.1. Monies not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate of one-half percent per month.

7. RETAINAGE

7.1. Prior to Final Completion, Owner shall retain from progress payments 5 percent of the value of Work completed.

8. CONTRACTOR'S REPRESENTATIONS

8.1. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

8.1.1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

8.1.2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

- 8.1.3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- 8.1.4. Contractor has carefully studied: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) if any, which have been identified in Paragraph 5.03 of the Supplementary Conditions as containing reliable “technical data”, and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which have been identified in Paragraph 5.06 of the Supplementary Conditions as containing reliable “technical data.”
- 8.1.5. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on 1) the cost, progress, and performance of the Work; 2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and 3) Contractor’s safety precautions and programs.
- 8.1.6. Based on the information and observations referred to above, Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- 8.1.7. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- 8.1.8. Contractor has given Engineer written notice of conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- 8.1.9. The Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performance and furnishing of the Work.

9. CONTRACT DOCUMENTS

9.1. Contents:

9.1.1. The Contract Documents that are attached to this Agreement (except as expressly noted otherwise) consist of the following:

9.1.1.1. Agreement.

9.1.1.2. Addenda numbers 1 to 3 inclusive.

9.1.1.3. Invitation to Bid.

9.1.1.4. Bid Form. 9.1.1.5. Bid Bond.

9.1.1.6. First-Tier Subcontractor Disclosure Form.

9.1.1.7. Contract Specifications: Division 00 and Division 01;
Division 02 through Division 49.

9.1.1.8. Contract Drawings (including Design Details).

9.1.1.9. Executed Performance and Payment Bonds.

9.1.1.10. Copies of Public Works Bonds from Contractor and every
Subcontractor on the Project.

9.2. There are no Contract Documents other than those listed above in this Article.

9.3. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 11.01 of the General Conditions.

10. MISCELLANEOUS

10.1. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.2. Successors and Assigns: Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.3. Severability: Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.4. Assignment of Contract:

10.4.1. No assignment by a party hereto of any rights under or interests in the Contract shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may

not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.5. Contractor's Certifications:

10.5.1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this paragraph:

10.5.1.1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in Contract execution;

10.5.1.2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract Price at artificial noncompetitive levels, or (c) to deprive Owner of the benefits of free and open competition;

10.5.1.3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, noncompetitive levels; and

10.5.1.4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.6. Attorney Fees: In case suit or action is instituted to enforce any of the provisions of this Agreement, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in said suit or action. If an appeal is taken from any judgment or decree of such trial court, the losing party further promises to pay such sum as the appellate court shall adjudge reasonable as the prevailing party's attorney's fees on such appeal.

10.7. Authorization: The undersigned signing for Contractor represents, certifies, and warrants that the undersigned has the authority to sign on behalf of and bind the Contractor.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, 2023, (which is the Effective Date of the Agreement).

OWNER: _____

CONTRACTOR: _____

By: _____

By: _____

Title: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

Address for giving notices: