



City of Grand Island

Tuesday, January 12, 2010

Council Session

Item G16

**#2010-14 - Approving Addendum Number 1 to the Agreement for
Primary Clarifier Mechanism Replacement at the Waste Water
Treatment Plant**

Staff Contact: Steven P. Riehle, Public Works Director

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: January 12, 2010

Subject: Approving Addendum Number 1 to the Agreement for Primary Clarifier Mechanism Replacement at the Waste Water Treatment Plant

Item #'s: G-16

Presenter(s): Steven P. Riehle, Public Works Director

Background

The Waste Water Division of the Public Works Department on November 9, 2009 presented, by Resolution Number 2009-293, to the City Council of the City of Grand Island an agreement with the contracting firm, Oakview Construction, Inc. of Red Oak, Iowa for Project WWTP-2010-2.

Discussion

In negotiating responsibilities and timing of property insurance for the project, the Wastewater Division, in the interests of the project and all parties, is proposing addendum number 1. Addendum Number 1 outlines the contractor's requirement to carry property insurance for the duration of the project until final completion. At the final completion of the project the city's property insurance shall take over.

The cost associated in providing the expanded insurance by the contractor is \$290.00. The recommended charges regarding the insurance are shown on the addendum with a line drawn through deletions and an underline for additions.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee

3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve Addendum Number 1 with the contracting firm, Oakview Construction, Inc. of Red Oak, Iowa.

Sample Motion

Move to approve Addendum Number 1 with Oakview Construction, Inc.

**ADDENDUM NUMBER 1 TO THE CONTRACT DOCUMENTS FOR PRIMARY
CLARIFIER MECHANISM REPLACEMENT
PROJECT WWTP – 2010 - 2**

General Provisions

A. This Document Controlling. To the extent that there are conflicting provisions between this document and the agreement between The City of Grand Island and Oakview Construction, Inc., this document controls.

B. Modifications and Deletions. The following provisions are deleted or modified from original agreement for the contract documents for Primary Clarifier Mechanism Replacement, Project WWTP – 2010 - 2; Dated November 10, 2009 as follows:

- (i) **Project Manual; General Conditions of the Contract; Page i of iv; Article 5 – BONDS AND INSURANCE; 5.06 Property Insurance; remove strikethrough in the words “Property Insurance”.**
- (ii) **Project Manual; General Conditions of the Contract; Page 23 of 75; Article 5 – BONDS AND INSURANCE; 5.06 Property Insurance; Add new paragraphs 5.06, 5.07, 5.08, 5.10 and title; as stated:**

5.06. Property Insurance.

A. Contractor, with sole liability for payment of premiums, shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:

- 1. include the interests of Owner, Contractor, Subcontractors, Engineer, Engineer's Consultant, and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
- 2. be written on a Builder's Risk “all-risk” policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, flood, and damage caused by frost and freezing;
- 3. include expenses incurred in the repair or replacement of any insured property (including, but not limited to, fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer, with 30 days' written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 shall contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued, and shall contain waiver provisions in accordance with Paragraph 5.07.
- C. If Owner requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Contractor shall, if possible, include such insurance, and the cost thereof will be charged to Owner by appropriate Change Order. Prior to commencement of the Work at the Site, Contractor shall in writing advise Owner whether or not such other insurance has been procured by Contractor.

5.07. Waiver of Rights.

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, Engineer, Engineer's Consultant, as loss payees (and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, Engineer, Engineer's Consultant, and all other individuals or entities listed as loss payees (and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for

losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, Engineer, Engineer's Consultant, and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by Owner; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy covering any loss, damage, or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Owner, Contractor, Subcontractors, Engineer, Engineer's Consultant, or the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08. Receipt and Application of Insurance Proceeds.

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.10. Partial Utilization, Acknowledgment of Property Insurance.

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.05 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

(iii) **Project Manual; Section 0500, Agreement; Page 3 of 10; Article 4 – CONTRACT PRICE; Add modifications ; as stated:**

Article 4 - CONTRACT PRICE

4.01 That the City shall pay to the contractor for the performance of the work embraced in this contract and the contractor will accept as full compensation therefore the sum of the amounts determined pursuant to Paragraphs ~~4.01.F~~ **4.01.G** below, or as modified contractually in accordance with General Conditions for all services, materials, and work covered by and included in the contract award and designated in the foregoing Article I; payments thereof to be made in cash or its equivalent in the manner provided in the General Specifications.

A. Lump Sum Bid Price for Base Bid	(\$ 602,400.00)
B. Owner has elected to (accept) (reject) Bid Alternate A.	(\$ -17,500.00)
C. Owner has elected to (accept) (reject) Bid Alternate B.	(\$ -20,800.00)
D. Owner has elected to (accept) (reject) Bid Alternate C.	(\$ -6,000.00)
E. Owner has elected to (accept) (reject) Bid Alternate D.	(\$ -11,326.00)
F. Property Insurance	(\$ 290.00)

~~F.~~ For all Work a Lump Sum of:

~~Six Hundred Two Thousand Four Hundred Dollars and No Cents~~

(use words)

(\$ 602,400.00)

(use figures)

G. For all Work a Lump Sum of:

Six Hundred Two Thousand Six Hundred Ninety Dollars and No Cents

(use words)

(\$ 602,690.00)

(use figures)

IN WITNESS WHEREOF, owner and contractor have executed this Addendum Number 1.

City of Grand Island, Nebraska
OWNER

By: _____

Name: Margaret Hornady

Title: Mayor

Date: _____

Oakview Construction, Inc.
CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____

Attest:

RaNae Edwards, City Clerk

Approved as to Form _____
January 12, 2010 City Attorney

RESOLUTION 2010-14

WHEREAS, on November 9, 2009, by Resolution Number 2009-293, the City Council of the City of Grand Island approved the agreement with the contracting firm, Oakview Construction, Inc. of Red Oak, Iowa for the contracting services associated to Project WWTP-2010-2 Primary Clarifier Mechanism Replacement for City of Grand Island, Wastewater Division; and

WHEREAS, city staff has negotiated the responsibilities for property insurance requirements throughout the construction project with engineering consultant, and contractor: and

WHEREAS, city staff has negotiated Addendum Number 1 with the contracting firm, Oakview Construction, Inc to modify the scope of the original contract with appropriation of additional funds in providing property insurance; and

WHEREAS, it has been determined that it is in the best interest of the City of Grand Island to enter into Addendum Number 1 with the contracting firm, Oakview Construction, Inc. of Red Oak, Iowa; and

WHEREAS, the negotiated Addendum Number 1, and the fee for such contracting services of \$290.00 is considered fair and reasonable; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Addendum Number 1 with the contracting firm, Oakview Construction, Inc. of Red Oak, Iowa, in the amount of \$290.00 for furnishing property insurance for WWTP-2010-2 Primary Clarifier Mechanism Replacement is hereby approved for an adjusted contract price of \$602,690.00.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute a contract for such addendum on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, January 12, 2010.

Peg Gilbert, Council President

Attest:

RaNae Edwards, City Clerk

Approved as to Form
January 11, 2009

City Attorney