



**Executive Summary
Fayette County Public Schools Board Meeting
Agenda Item**

MEETING: Regular

DATE: 7/25/2016

TOPIC: Ridgewater, Contract 16-17

PREPARED BY: Amanda Dennis

Recommended Action on: 7/25/2016

Action Item for Vote (REGULAR MEETING)

Superintendent Prior Approval: No

Recommendation/Motion: A motion is in order to approve the contract between Ridgewater, LLC and Fayette County Public Schools

Background/Rationale: Board Policy 01.11 states that contracts with the district with an expenditure amount above \$20,000.00 must be approved by a vote of the Board. This month District staff would like to enter into a contract with Ridgewater, LLC.

Policy: Board Policy 01.11

Fiscal Impact: \$38,920.00

Attachments(s): Click here to enter text.

AN EQUAL OPPORTUNITY SCHOOL DISTRICT

Board of Education: Melissa Bacon, Chair • Amanda Ferguson, Vice Chair • Douglas Barnett • Daryl Love • Raymond Daniels

Superintendent Emmanuel Caulk

701 East Main Street, Lexington, Kentucky 40502 • Phone: 859.381.4100 • www.fcps.net

Mailing Address: 1126 Russell Cave Rd., Lexington, Kentucky 40505

DESIGN SERVICES AGREEMENT

This Design Services Agreement (AGREEMENT) made and entered into

by and between CLIENT,

The Board of Education of Fayette County, Kentucky
701 East Main Street
Lexington, KY 40502

and the CONTRACTOR,

Ridgewater, LLC
908 Woodglen Court
Lexington, KY 40515
(859) 806-1089
Fax: (866) 348-0528 edawaltrw@gmail.com

describes the Services to be provided by CONTRACTOR for **The Fayette County Public Schools (FCPS) Stormwater Improvements - Feasibility Study** (PROJECT).

RECITAL

Whereas, the Parties desire the CONTRACTOR to provide Design services to perform a Stormwater Improvement Feasibility Study for various FCPS facilities.

Whereas, a portion of the PROJECT is being funded by the LFUCG Stormwater Quality Projects Incentive Grant Program as a Class B Infrastructure Project (FEASIBILITY ONLY) grant.

Therefore, for valuable consideration, the Parties agree as follows:

I. WORK

CONTRACTOR agrees to furnish all supervision, labor, materials, equipment, and tools necessary to fully complete the PROJECT in a professional manner, as specified in Exhibit A (WORK) and in accordance with the terms of this AGREEMENT.

II. APPROVALS

CONTRACTOR shall deliver to CLIENT or CLIENT's designated representative copies of shop drawings, cuts, samples and materials lists if requested by CLIENT in accordance with Exhibit A within sufficient time so as not to delay performance of the PROJECT.

III. CHANGES

The WORK may be supplemented or modified only with written approval from CLIENT, or CLIENT'S AGENT, and no work believed to constitute a change is compensable unless a written Amendment is executed by both Parties.

IV. TERM OF AGREEMENT

This AGREEMENT shall be effective upon the signing of this Agreement by both Parties. CONTRACTOR shall thereafter commence the WORK within a reasonable period and shall use its best efforts to complete the WORK by December 31, 2016; however CONTRACTOR must complete the WORK no later than March 31, 2017 (COMPLETION DATE) with the exception that these completion dates are contingent on acquiring the necessary permits in a timely manner. Any delays due to circumstances outside of CONTRACTOR control will necessitate an extension of the COMPLETION DATE without penalty or termination of contract by CLIENT.

CONTRACTOR will proceed with the WORK in a prompt and diligent manner, in accordance with CLIENT's current schedule for the WORK. The CONTRACTOR will use its best efforts to coordinate the

WORK so as not to impede the progress of other work required to be provided by or for CLIENT on the PROJECT.

CLIENT shall have the right to terminate this AGREEMENT upon ten (10) days written notice as provided in Section VII of this AGREEMENT.

V. AGREEMENT PRICE

The AGREEMENT Price shall be the Lump Sum Amount of **\$38,920.00 (Thirty-eight Thousand Nine Hundred Twenty Dollars and no cents)** as specified in the Project Budget which is attached hereto and incorporated by reference herein as Exhibit B. Terms of Payment shall be as specified in Section VI of this AGREEMENT.

VI. TERMS OF PAYMENT

All payments shall be due to CONTRACTOR in accordance with the provisions of Exhibit B of this AGREEMENT. The CONTRACTOR shall submit invoices on a monthly basis. Payments shall be paid within thirty (30) days upon receipt of CONTRACTOR invoice and acceptance of work performed by CLIENT. Acceptance of final payment shall constitute a waiver of any and all claims, known or unknown, of CONTRACTOR.

VII. CONTRACTORS FAILURE TO PERFORM

If the CONTRACTOR at any time refuses or fails to provide sufficient properly skilled workers or materials of the proper quality, fails in any respect to execute the WORK according to the current schedule, or fails to comply with all provisions of this AGREEMENT, then:

- A) CLIENT shall so notify CONTRACTOR in writing of each such failure (the "Notice"); and
- B) CONTRACTOR shall then have ten (10) days to cure or remedy each failure.

Should CONTRACTOR fail to cure each failure listed in the Notice within ten days from the receipt thereof, then CONTRACTOR shall: (1) cease operations as directed by CLIENT in the Notice; (2) take actions necessary, or that CLIENT may direct, for the protection and preservation of the WORK; and (3) except for the WORK directed to be performed prior to the effective date of termination stated in the Notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In the event of termination for default, CLIENT will pay CONTRACTOR for any work completed and any open or outstanding invoice within 1 week of termination.

VIII. CONTRACTOR'S INSURANCE

Prior to commencing the WORK, CONTRACTOR shall procure, with CLIENT named as additional insured parties, and thereafter maintain, at its own expense, until final acceptance of the WORK, general liability insurance coverage in the minimum amount of five hundred thousand dollars (**\$500,000.00**).

CONTRACTOR shall maintain for employees, insurance in the minimum amount of five hundred thousand dollars (**\$500,000.00**) for claims under applicable worker's compensation and other employee benefit acts, for claims for bodily injury, including death, and from claims for damages to property which may arise both out of and during operations under this AGREEMENT.

CONTRACTOR shall provide proof of adequate insurance under this Section to CLIENT before commencing WORK.

IX. INDEMNITY AND HOLD HARMLESS

CONTRACTOR shall bear all responsibility for losses or damages arising out of errors, omissions, interruptions, delays, or defects by CONTRACTOR or any agent(s) of CONTRACTOR, including, but not limited to breach of any duties, responsibilities, or obligations imposed under the terms of this AGREEMENT.

CONTRACTOR hereby agrees to protect, hold harmless and indemnify CLIENT, its officers, members, and employees from any claims, damages sustained by, or alleged to have been sustained by any person, including employees of the parties hereto, and due to an occasioned or alleged negligent act, error, or omission of CONTRACTOR in regard to services performed under this Agreement.

CLIENT shall bear all responsibility for losses or damages arising out of errors, omissions, interruptions, delays, or defects by CLIENT or any agent(s) of CLIENT, including, but not limited to breach of any duties, responsibilities, or obligations imposed under the terms of this AGREEMENT.

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X. LIABILITY OF CONTRACTOR FOR DEFECTS

CONTRACTOR shall be liable for latent defects, faulty materials and faulty workmanship and shall further be liable for correcting such defects, replacing faulty materials and correcting faulty workmanship without cost to CLIENT.

XI. CLEAN-UP

CONTRACTOR shall clean up and remove all debris resulting from the WORK in a manner that will not impede the progress of the PROJECT.

XII. TAXES AND PERMITS

CONTRACTOR shall pay for, comply with and hold CLIENT harmless against the payment of all contributions, taxes or premiums which is be payable by CONTRACTOR under Federal, state or local laws arising out of the performance of this AGREEMENT, and all sales, use or other taxes of whatever nature levied or assessed against CONTRACTOR arising out of this AGREEMENT, including any interest or penalties. CONTRACTOR shall maintain on site at all times copies of all applicable permits, licenses, and inspections.

XIII. LAWS, REGULATIONS AND ORDINANCES

CONTRACTOR shall be bound by, and, at its own cost, comply with all Federal, state and local laws, codes, ordinances and regulations applicable to this AGREEMENT and the performance of the WORK including the Occupational Safety and Health Act of 1970. CONTRACTOR shall be duly licensed to operate under the law of the applicable jurisdictions. CONTRACTOR shall indemnify and hold CLIENT harmless for all loss, cost and expense attributable to any acts of commission or omission by CONTRACTOR, its employees and agents resulting from failure to comply therewith including, but not limited to, any fines, penalties or corrective measures. This AGREEMENT shall be performed and governed by the laws of the Commonwealth of Kentucky.

XIV. EQUAL OPPORTUNITY

In connection with the performance of WORK under this AGREEMENT, CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, handicap, color or national origin.

XV. ASSIGNMENT OF AGREEMENT BY CONTRACTOR

Portions of this AGREEMENT may be assigned or sublet as a whole or part by the CONTRACTOR if it is judged by the CONTRACTOR to improve efficiency, quality of work, or has another advantageous reason. However, liability for any negligence, errors, or omissions of assignee or entity sublet to will be actionable against CONTRACTOR as assignor for purposes of enforcement of this contract.

XVI. LETTER OF COMPLETION

When the CONTRACTOR has completed the WORK, the CONTRACTOR shall so notify CLIENT with a letter of completion. Within ten (10) days after receipt of such notice, CLIENT shall inspect the WORK and, if the WORK is satisfactory, final payment will be made to the CONTRACTOR consisting of the entire outstanding balance of the AGREEMENT price which is due to CONTRACTOR. CLIENT shall make the final payment within thirty (30) days after letter of completion, in accordance with the terms of this Agreement. If the CONTRACTOR has substantially completed the WORK but is delayed through no fault of CONTRACTOR from fully completing the WORK, the CONTRACTOR shall so notify CLIENT in writing and CLIENT shall proceed with an inspection of the WORK. CLIENT shall then make a payment to the CONTRACTOR of the entire balance of the AGREEMENT price then due, less the amount representing the unfinished portion of the WORK. Such a payment shall not constitute a waiver of

claims, and the CONTRACTOR shall remain obligated to fully complete the remaining portion of the WORK as soon as possible.

XVII. COMPLETE AGREEMENT

The AGREEMENT contains the entire AGREEMENT between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties, or other matters, oral or written, shall be deemed to bind the parties hereto. This agreement may not be modified except in writing signed by both parties hereto.

XVIII. PARTIAL INVALIDITY OF AGREEMENT

The parties to this AGREEMENT agree that if any of the provisions of the AGREEMENT shall contravene or be invalid under the laws of the Commonwealth of Kentucky, such a contravention or invalidity shall not invalidate the entire AGREEMENT, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly. A waiver of a breach of any of the terms or conditions of this AGREEMENT shall not be construed as a waiver of any subsequent breach. Any consent to delay in the performance of CONTRACTOR of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction. Delay in the enforcement of any remedy in the event of a breach of any term or condition of this AGREEMENT, or in the exercise by either party of any right under or pursuant to this AGREEMENT, shall not be construed as a waiver.

XIX. ADDITIONAL TERMS

- A. CONTRACTOR shall maintain for the duration of the AGREEMENT the valid licenses to perform the WORK as required by the local and state governments in which the WORK is being performed.
- B. The AGREEMENT Documents shall consist of this AGREEMENT, attached Exhibits (including any and all Plans, Drawings, and Specifications), and all amendments, addenda or modification of any of these documents.
- C. All elements of the AGREEMENT shall be equally binding on, and shall be enforced on the CONTRACTOR, all subcontractors and others associated with the items of the WORK.
- D. AGREEMENT Documents including Exhibits are to be considered mutually cooperative, complementary and correlating and what is called for by one shall be binding as if called for by all. Any discrepancy between documents shall be pointed out immediately by either the CONTRACTOR or CLIENT.
- E. The AGREEMENT Documents contemplate a finished product of such nature and quality as is reasonably inferred from them.
- F. CONTRACTOR is responsible for locating public utilities with Kentucky 811 Underground Utility Locating Service and avoiding all marked utilities.
- G. CLIENT is responsible for locating and marking all private utilities owned and / or operated by CLIENT. CONTRACTOR will not be responsible for damage to utilities not properly located and marked.
- H. There shall be no rule interpreting any ambiguities in this Agreement against the drafter.

XX. EXHIBITS

- A. Work
- B. Project Budget
- C. Sheet for attaching Insurance Certificates

XXI. ACCEPTANCE

ACCEPTED and AGREED to on this _____ day of _____, 2016

CLIENT

CONTRACTOR

Signature

Signature

MQT
2/10/16

Printed Name and Title

Eric Dawalt, P.E., President

Printed Name and Title

Exhibit A Work

The WORK of this AGREEMENT consists of the Design Services necessary to perform a Stormwater Improvement Feasibility Study at various Fayette County Public School (FCPS) facilities,

and as described in:

Attachment A to the Grant Award Agreement between Lexington-Fayette Urban County Government (LFUCG) and Fayette County Public Schools (FCPS),

for the:

FY2016 Stormwater Quality Projects Incentive Grant Program Class B Infrastructure Project [FEASIBILITY ONLY Grant] (attached).

Exhibit B Project Budget

| Project Budget | | | |
|----------------|----|----------------------|--------------------|
| | 1. | Feasibility Phase: | \$38,920.00 |
| | | Total Budget: | \$38,920.00 |

Exhibit C
Sheet for Attaching Insurance Certificates

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XX. EXHIBITS

- A. Work
- B. Project Budget
- C. Sheet for attaching Insurance Certificates

XXI. ACCEPTANCE

ACCEPTED and AGREED to on this _____ day of _____, 2016

CLIENT

CONTRACTOR

Signature

Signature

*MDT
2/10/16*

Printed Name and Title

Eric Dawalt, P.E., President

Printed Name and Title

Exhibit A Work

The WORK of this AGREEMENT consists of the Design Services necessary to perform a Stormwater Improvement Feasibility Study at various Fayette County Public School (FCPS) facilities,

and as described in:

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Exhibit B **Project Budget**

| Project Budget | | | |
|-----------------------|----|----------------------|--------------------|
| | 1. | Feasibility Phase: | \$38,920.00 |
| | | Total Budget: | \$38,920.00 |

Exhibit C
Sheet for Attaching Insurance Certificates