

**HIGHLINE WATER DISTRICT  
King County, Washington**

**RESOLUTION 20-11-24B**

**RESOLUTION AUTHORIZING CONTRACT #20-50-21 WITH TMG SERVICES INC FOR REPLACEMENT OF ELECTROLYZER CELL PANEL AT THE DES MOINES TREATMENT PLANT**

**WHEREAS**, the District owns and operates a Wallace & Tiernan Onsite Hypochlorite Generation Unit (OHG) at the Des Moines Treatment Plant; and

**WHEREAS**, the existing electrolyzer cell panel component of the OHG is failing and nearing the end of its useful life; and

**WHEREAS**, TMG Services Inc is the local representative of Wallace & Tiernan OHG systems and parts; and

**WHEREAS**, the District requested a proposal from TMG Services Inc to replace and install a new electrolyzer cell panel; and

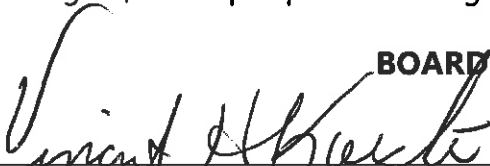
**WHEREAS**, the District Engineer and General Manager are satisfied with the proposal from TMG Services Inc (Exhibit A, incorporated herein by this reference) and recommend approval of this resolution.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The General Manager is authorized to enter Contract #20-50-21 (Attachment-1, incorporated herein by this reference) with TMG Services Inc for an amount not to exceed \$40,579.00 plus tax.
2. The General Manager and/or the District's legal counsel are authorized to make minor changes to the agreement if required.

**ADOPTED BY THE BOARD OF COMMISSIONERS** of Highline Water District, King County, Washington, at an open public meeting held this **24th** day of **November 2020**.

**BOARD OF COMMISSIONERS**

  
\_\_\_\_\_  
**Vince Koester**, President

  
\_\_\_\_\_  
**Polly Daigle**, Commissioner

  
\_\_\_\_\_  
**Kathleen Quong-Vermeire**, Commissioner

  
\_\_\_\_\_  
**Todd Fultz**, Secretary

  
\_\_\_\_\_  
**Daniel Johnson**, Commissioner

**THIS AGREEMENT** ("Agreement") is entered into between **HIGHLINE WATER DISTRICT**, King County, Washington, a municipal corporation and special purpose district organized and existing under the laws of the State of Washington (hereafter referred to as "the District"), and **TMG SERVICES, INC.** (hereafter referred to as "the Contractor"), in consideration of the mutual benefits, terms and conditions hereinafter specified.

1. Project. The Contractor shall do all work and furnish all tools, materials and equipment for the District's project known as: ***Replacement of Electrolyzer Cell Panel at Des Moines Treatment Plant***

("Project") in accordance with and as described in the 11/11/20 Contractor's proposal, attached as **Exhibit A** and incorporated herein by this reference.

2. District Agreement. The District employs the Contractor to provide the materials and to do and cause to be done the Project work described above and to complete and finish the work according to the attached plans and specifications, if any, and the terms and conditions of this contract and agrees to pay for the work at the time, in the manner and upon the conditions provided for in this contract.
3. Contractor Agreement. The Contractor agrees to fully perform the work upon all terms and conditions as contained in this contract. The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the project provided for in this contract, except those that are mentioned in the specifications to be furnished by the District.
4. Completion Deadline/Liquidated Damages. The work must commence within ten (10) calendar days of the provision of the agreed Notice to Proceed. Completion time shall be within thirty (30) calendar days after receipt by the Contractor of the notice to proceed issued by the Owner. There shall be no work performed on holidays or weekends, unless approval for such work is granted by District. Requests for such extended work shall be made at least 24 hours prior to that requested time. Coordination with Highline Water District for access to site is required. Contact Jon Seibel at (206) 592-8946.

If the work is not completed within that time period, because of difficulty in computing the actual damages to the District arising from any delay in completing this Agreement, it is determined in advance and agreed by the parties that the Contractor shall pay the District the amount of \$100.00 per calendar day that the work remains uncompleted after expiration of the specified time for completion. The parties agree that this amount represents a reasonable forecast of the actual damages which the District will suffer by failure of the Contractor to complete the work within the agreed time period. The execution of this Agreement shall constitute acknowledgment by the Contractor that the Contractor has ascertained and agrees that the District will actually suffer damages in the above amount for each day during which the completion of the work is avoidably delayed beyond the agreed completion date.

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5. Project Cost. The amount of the project cost is not to exceed Forty Thousand Five Hundred Seventy-Nine and 00/100 Dollars (\$40,579.00) plus 10% Washington State sales tax unless amended and authorized by the District.
  
6. Payment Terms. The District shall pay the Contractor on the following terms: Incremental payments, plus Washington State Sales tax to be paid from a contractor invoice (which must be approved by the District's Engineering/Operations Manager or designated Supervisor). Per RCW 60.28.11(1)(a) public improvement contracts must provide, and public bodies must reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (i) The claims of any person arising under the contract; and (ii) the state with respect to taxes, increases, and penalties imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor.
  
7. Prevailing Wages (Appendix A).  
The Contractor shall pay prevailing wages and shall comply with RCW 39.12 and RCW 49.28. A Notice of Intent to Pay Prevailing Wages and prevailing wage rates for the work must be posted for the benefit of workers. At the conclusion of the Agreement, the Contractor and its subcontractors shall submit Affidavits of Wages Paid to the Department of Labor and Industries for certification by the director. Final payment on the Agreement shall be withheld until certification by the director has been received by the District that the prevailing wage requirements of the law have been satisfied. The Contractor hereby certifies that it has not been cited for two violations within the last five (5) years, and is thus prohibited from bidding on public works projects. The Contractor further assures the District that it will use no sub-contractor who is thus prohibited.

Effective July 23, 2017, before award of a public works contract, the bidder under consideration for award of a public works project must submit to the public agency a sworn statement (**Appendix A2**) that they have not willfully violated wage payment laws within the past three years in order to be considered a responsible bidder. (Reference RCW 39.04.350).

Effective July 1, 2019, all businesses are required to have training before bidding and/or performing work on public works projects under the responsible bidder criteria in RCW 39.04.350 and RCW 39.06.020. A business is exempt from this training requirement if it has been in business with an active Unified Business Identifier (UBI) number for 3 or more years **AND** has performed work on 3 or more public works projects.

Beginning January 1, 2020, weekly certified payroll reports are required to be filed online with L&I at least once a month for all public works projects. Earlier this year, the legislature passed ESSB 5035, adding this requirement to the prevailing wage laws within Chapter 39.12. Reference RCW 39.12.120.

This change effects all public works projects on January 1 to include those that are in progress and all new ones moving forward. Each contractor must file their certified payroll using L&I's online system at least once a month. Please note, contractors can be penalized for failing to file.

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8. Indemnification and Hold Harmless. The Contractor shall indemnify, defend and save the District and its commissioners, manager, employees and engineers harmless from any and all claims and risks and losses, damages, demands, suits, judgments and attorney's fees or other expenses of any kind on account of or relating to injury to or death of any and all persons or on account of all property damage of any kind, or in any manner connected with the work performed under this Agreement, or caused in whole or in part by reason of the presence of the Contractor, a subcontractor or their property, employees or agents during performance of the work or at any time before final acceptance, except only for those losses resulting from and to the extent of the sole negligence of the District with regard to activities within the Contractor's scope of work.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the District, its members, officers, employees and agents, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

In a lawsuit with respect to this hold harmless provision, the Contractor shall prepare and defend that lawsuit at its own cost and expense. If judgment is rendered or settlement made requiring payment of damages by the District, its officers, agents, employees and volunteers, the Contractor shall pay the same.

9. Bond.

RCW 39.08.010 (effective 7/23/17)

(3) On contracts of one hundred fifty thousand dollars or less, at the option of the contractor or the general contractor/construction manager as defined in RCW 39.10.210, the respective public entity may, in lieu of the bond, retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. The recovery of unpaid wages and benefits must be the first priority for any actions filed against retainage held by a state agency or authorized local government.

Contractor Authorization: \_\_\_\_\_

**OR**

(4) For contracts of one hundred fifty thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties (**Appendix B**).

(5) The surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington.

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**10. Insurance.**

- 10a** The Contractor shall obtain and keep in force during the term of this Agreement Commercial General Liability and Automobile Liability insurance policies with insurance companies which have an A.M. Best's rating of A VII or better, and which are approved by the Washington Insurance Commissioner pursuant to RCW 48.
- 10b** The Contractor shall file with the District a certified copy of all policies or a certificate of insurance evidencing that the policies are in force. The certificate shall be accompanied by policy endorsements as are necessary to comply with these requirements. The Contractor's Department of Labor & Industries' account number shall be noted on the certificate of insurance. Failure of the Contractor to fully comply with the requirements regarding insurance will be considered a material breach of contract and shall be cause for immediate termination of the contract.
- 10c** In addition, the Contractor shall have its insurance agent/representative complete the District's Insurance Coverage Questionnaire (**Appendix C**) and attach it to the certificate of insurance for the District's approval.
- 10d** The Contractor shall not begin work under the Agreement until all required insurance has been obtained and until such insurances have been received by the District. The insurance shall provide coverage for the Contractor, his subcontractors and the District.
- 10e** The insurance policies shall specifically name the District, its elected or appointed officials, officers, employees and volunteers as insureds with regard to damages and defense of claims arising from: (i) activities performed by or on behalf of the Contractor; or (ii) products and completed operations of the Contractor; or (iii) premises owned, leased or used by the Contractor. The insurance shall be maintained in full force and effect at the Contractor's expense throughout the term of the Agreement.
- 10f** The coverage provided by the Contractor's insurance policies shall be primary to any insurance maintained by the District, except as respects losses attributable to the sole negligence of the District. Any insurance that might cover this Agreement which is maintained by the District shall be in excess of the Contractor's insurance and shall not contribute with the Contractor's insurance.
- 10g** The General Aggregate provision of the Contractor's insurance policies shall be amended to show that the General Aggregate Limit of the policies applies separately to this contract.
- 10h** Types and Limits of Insurance Requires:

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**COMMERCIAL GENERAL LIABILITY**

- ▶ \$1,000,000 per occurrence liability (including extended bodily injury)
- ▶ \$2,000,000 annual aggregate
- ▶ District Employees, Elected and Appointed Officials and Volunteers as Additional Insureds
- ▶ Workmen's Compensation – L1 employees of Contractor and Subcontractors are to be insured under Washington State Industrial Insurance. Contractor shall also be required to carry Stop Gap Liability Insurance for \$500,000 each occurrence, each accident.
- ▶ Employers Liability (Stop-gap)

**AUTOMOBILE LIABILITY**

- ▶ \$1,000,000 per accident bodily injury and property damage liability, including:
- ▶ Any owned, hired or non-owner automobile.

**10i** The Contractor shall be solely and completely responsible for safety and safety conditions on the job site, including the safety of all persons and property during performance of the work. The Contractor shall provide safe access for the District and its inspectors to adequately inspect the quality of work and the conformance with project specifications.

**11. Termination.** The District may terminate this Agreement at any time upon written notice to Contractor, subject to the District's obligation to pay Contractor in accordance with subsections A and B below.

**11a** In the event this Agreement is terminated by the District other than for fault on the part of the Contractor, a final payment shall be made to the Contractor for actual cost of work completed at the time of termination of the Agreement. No payment shall be made for any work completed after receipt by the Contractor of the termination notice. If the accumulated payment(s) made to the Contractor prior to the termination notice exceeds the total amount that would be due as set forth in this subsection, then no final payment shall be due and the Contractor shall immediately reimburse the District for any excess paid.

**11b** In the event the services of the Contractor are terminated by the District for fault on the part of the Contractor, subsection A of this section shall not apply. In such event the amount to be paid shall be determined by the District with consideration given to the actual costs incurred by the Contractor in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or of a type which

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is usable by the District at the time of termination, the cost to the District of employing another person or firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the District of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made if subsection A of this section applied.

**12. Dispute Resolution.**

**12a Mediation.** If any dispute, controversy, or claim arises out of or relates to this Agreement, the parties agree first to try to settle the dispute by non-binding mediation with the assistance of a recognized professional mediation service. The parties shall each designate a representative with full settlement authority who will participate for at least four hours in the mediation. The parties shall bear equally all expenses, exclusive of attorneys' fees associated with the mediation.

**13. Effective Date.** The effective date of this Agreement shall be the date that the Agreement is signed by an authorized representative of the District.

**14. Authority.**

The individuals who sign this Agreement on behalf of the respective party represent and warrant they have the full power and authority and are authorized by the party to do so.

**HIGHLINE WATER DISTRICT  
(Owner)**

By: \_\_\_\_\_

Matt Everett

Title: General Manager

Date: \_\_\_\_\_

**TMG SERVICES, INC.  
(Contractor)**

By: \_\_\_\_\_

Mary I. Gazdik

Title: President

Date: \_\_\_\_\_

***MAILING ADDRESS:***

23828 30th Ave S  
Kent, WA 98032

***CONTACT PHONE:***

Office (206) 824-0375  
Fax (206) 824-0806

***MAILING ADDRESS:***

3216 E Portland Avenue  
Tacoma, WA 98404

***CONTACT PHONE:***

Office (253) 779-4160



3216 E. Portland Avenue  
Tacoma, WA 98404  
253-779-4160  
tmginc@tmgservices.net

**EXHIBIT A**

November 11th, 2020  
QUOTATION rev.1

Jon Seibel  
Highline Water District  
23828 30<sup>th</sup> Avenue S.  
Kent, WA 98032

Reference: OSEC Cell Replacement, 48PPD – Warranty on serial number BT14051

Jon,

As you know, the OSEC BP system has been discontinued by Evoqua. As a consequence, NSF listed electrolyzer cells are much more difficult to acquire, and our costs keep going up. That said, however, the cells are warranted for seven years, whereas the last five are pro-rated.

Therefore, due to the cells in the 48PPD OSEC BP system beginning to fail prematurely, TMG Services can offer you a special discount on a new electrolyzer cell panel, as follows:

1 Evoqua/W&T 48PPD Electrolyzer Cell Panel consisting of the following:

- (4) 12PPD Cells
- w/ Back Panel
- Temperature & Level Switch

2020 List Price:	\$45,360
Quoted Price:	\$42,435
Installation, S/U & Training:	\$1,365 (Prevailing Wage Included)
Additional Warranty Discount:	<u>\$-3,221</u>
<b>SELL PRICE:</b>	<b>\$40,579 (Includes Freight, Installation &amp; Startup)</b>

Terms & Conditions of Sale:

- F.O.B.: Kent, WA
- Payment Terms: Net 30 Days – Our terms of payment are 100% payable 30 days after shipment. Since this is an agreement between Buyer and Seller, and Seller has no relationship with the third-party owner, this agreement must be independent of any third party action or inaction. Payment will be due as indicated above without a dependency on the buyer being paid by the owner, with no further restriction or impediments, and regardless of any payment arrangement that may exist between contractor and owner.
- This price is in effect for 60 days.
- Delivery will be made in approximately 2-4 weeks after receipt of order and/or approvals and resolution of all necessary technical data at T M G Services.
- Quotation prices do not include any sales taxes or any other taxes that may apply.
- This quotation is limited to the products and/or services as listed and excludes any item or service not specifically listed.

Thank you again. If you have any questions give me a call.

Regards,

Jeff Harmon  
TMG Services, Inc.



State of Washington  
 Department of Labor & Industries  
 Prevailing Wage Section - Telephone 360-902-5335  
 PO Box 44540, Olympia, WA 98504-4540

APPENDIX A

### Washington State Prevailing Wage

The PREVAILING WAGES listed here include both the hourly wage rate and the hourly rate of fringe benefits. On public works projects, worker's wage and benefit rates must add to not less than this total. A brief description of overtime calculation requirements are provided on the Benefit Code Key.

#### Journey Level Prevailing Wage Rates for the Effective Date: 11/11/2020

<u>County</u>	<u>Trade</u>	<u>Job Classification</u>	<u>Wage</u>	<u>Holiday</u>	<u>Overtime</u>	<u>Note</u>	<u>*Risk Class</u>
King	<a href="#">Plumbers &amp; Pipefitters</a>	Journey Level	\$90.69	<a href="#">6Z</a>	<a href="#">1G</a>		<a href="#">View</a>



**Certification of Compliance with Wage Payment Statutes**

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (\_\_\_\_\_), the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

\_\_\_\_\_  
Bidder's Business Name

\_\_\_\_\_  
Signature of Authorized Official\*

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_                      \_\_\_\_\_                      \_\_\_\_\_  
Date                                      City                                      State

**Check One:**

Sole Proprietorship     Partnership     Joint Venture     Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

\_\_\_\_\_

If a co-partnership, give firm name under which business is transacted:

\_\_\_\_\_

*\* If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

**PUBLIC WORKS CONTRACT PERFORMANCE BOND  
AND LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL BY THESE PRESENTS, that, \_\_\_\_\_, as Principal, hereinafter called Contractor, and \_\_\_\_\_, hereinafter called Surety, a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to do business and transacting business in the State of Washington as Surety are held and firmly bound and obligated to Highline Water District, a Municipal Corporation located at 23828 30th Ave S, Kent, Washington 98032, hereinafter called owner, in the full and just sum of \_\_\_\_\_ (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum will and truly to be made, Surety and Contractor do bind themselves, their and each of their heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THIS BOND IS EXECUTED IN PURSUANCE OF CHAPTER 39.08 REVISED CODE OF WASHINGTON AND BINDS SURETY AND CONTRACTOR TO THE CONTENTS THEREOF.

THAT CONDITIONS OF THIS OBLIGATION ARE SUCH, that WHEREAS, the principal entered into a certain contract entitled:

***Replacement of Electrolyzer Cell Panel at Des Moines Treatment Plant (Contract No. 20-50-21)***

with Highline Water District, OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

NOW, THEREFORE, if the Principal shall faithfully perform all the provisions of such contract and pay all laborers, mechanics and subcontractors and materialmen, and all persons who shall supply such person or persons, or subcontractor, with provisions and supplies for the carrying on of such work, then this obligation is void; otherwise to remain in full force and effect.

No change, extension of time, alteration or addition to the work to be performed under the contract shall in any way affect Principal or Surety's obligation on this bond, and Surety does hereby waive notice of any changes, extension of time, alterations or additions hereunder.

SIGNED AND SEALED THIS the \_\_\_\_ day of \_\_\_\_\_, 2020.

By: \_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
ATTORNEY-IN-FACT

Notary Public in and for the State of Washington, residing at \_\_\_\_\_.

The Attorney-in-Fact, who executes this bond on behalf of Surety, must attach a copy of his Power of Attorney as evidence of his authority.

**INSURANCE COVERAGE QUESTIONNAIRE**

Name of Insured: \_\_\_\_\_

Contract Number: **20-50-21**

Project Name: **Replacement of Electrolyzer Cell Panel at Des Moines Treatment Plant**

Are the following coverages and/or conditions in effect?		
	Yes	No
The Policy form is ISO Commercial General Liability form CG 00 01 of CG 00 02 (circle one). If No, attach a copy of the policy with required coverages clearly identified.		
Products and Completed Operation Coverage		
Cross Liability Clause (or equivalent wording)		
Personal Injury Liability Coverage (with employee exclusion deleted)		
Broad Form Property Damage with X, C, U, Hazards included		
Blanket Contractual Liability Coverage applying to this contract		
Employers Liability - Stop Gap		
Builder's "all-risk" policy.		
True Umbrella Provision with drop down provision.		

	GL	AL	Excess
Deductibles of SIR's:			
Insurer Best Rating			

This questionnaire is issued as a matter of information. This questionnaire is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies indicated on the attached Certificate of Insurance.

\_\_\_\_\_  
Agency/Broker

\_\_\_\_\_  
Completed by (type)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Completed by (Signature)

\_\_\_\_\_  
Name of Person to Contact

\_\_\_\_\_  
Telephone Number

**Agenda Item No.:** 5.2  
**Agenda Date:** 11/24/20  
**Reviewed By:** [Signature]

Re: Authorize Contract #20-50-21 with TMG Services Inc for Replacement of Electrolyzer Cell Panel at Des Moines Treatment Plant

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input type="checkbox"/>
<i>Engineering/Operations</i>	<input checked="" type="checkbox"/>

FINANCIAL						
<i>Expenditures?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
<i>Budgeted?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Amount:		\$	<u>40,579.00</u>		Plus Tax	

**ATTACHMENTS:**

- 1. Resolution 20-11-24B
- 2. Attachment 1 – Contract #20-50-21
- 2. Exhibit A - Proposal

**COMMENTS:**

The existing electrolyzer cell panel at the Des Moines Treatment Plant is failing and nearing the end of its useful life.

The District requested a proposal from TMG Services Inc to replace and install a new electrolyzer cell panel.

The District Engineer and General Manager are satisfied with the proposal from TMG Services Inc (Exhibit A) and recommend approval of this resolution.