

Gallatin Gateway County Water & Sewer District

MINUTES OF THE

BOARD OF DIRECTORS

A special meeting of the Board of Directors of the Gallatin Gateway County Water & Sewer District was held at the Farmhouse Cafe, 76250 Gallatin Road, Gallatin Gateway, MT, on December 15, 2018. Present at the meeting were board members Eric Amend, Ted Border, and David Sullivan. General Manager Matt Donnelly and Secretary Maralee Parsons Sullivan were present, as was Kurt Thomson from Stahly Engineering. No members of the public were present

President Border called the meeting to order at 3:00 p.m. Secretary Maralee Parsons Sullivan recorded the minutes of the meeting.

PUBLIC PARTICIPATION OF NON-AGENDA ITEMS

President Border asked for public comment on non-agenda items. None were raised

CONFLICT OF INTEREST DISCLOSURE

President Border asked if there were any items of conflict of interest, or potential conflict of interest, to be raised. None were raised.

REGULAR BUSINESS

Discussion and Decision on Change Order #9 Reconciling Per Unit Costs of the Wastewater Construction Project

GM Donnelly advised that this CO is recommended by the engineer and signed by the contractor and reconciles the final quantities of materials for the entire project, resulting in a net reduction in contract price of \$60,234.81 (no change in the number of days). GM Donnelly noted that a final quantity spreadsheet with the reconciliations will be included with the copy sent to USDA for concurrence. Kurt Thomson agreed he would include contractor's pay application #16, noting column C includes "Quantity Installed to Date". Director Amend moved to approve CO#9; Director Sullivan seconded the motion. There was no further Board discussion. The motion carried 3-0.

Discussion and Decision on Change Order #10 Settling Contractor's Claims for Underground Utilities and Site Conditions

GM Donnelly advised that this change order is a result of 4-5 months of contract negotiations by attorneys for all 3 parties. The contractor originally put forth a change proposal in excess of \$1M. The engineer informed the District that they had received the change proposal but felt it was excessive. The options available to the engineer are to recommend approval of the change proposal, deny the change proposal, or take no action on the change proposal. If the change proposal is denied, or if no action is taken, the construction contract stipulates that the contractor has a right to make an "article 12" claim and can

negotiate directly with the District. The attorneys for all parties have negotiated a settlement resulting in Change Order #10. As a result of their negotiations, the parties have determined that the contractor will receive a net of \$300,000 and the engineer will receive \$250,000 from the District for unscheduled engineering charges, plus \$5,000 for additional grant administration. The net change is \$555,800. CO#10 also increases the contract time by 133 days. Liquidated damages are thus assessed for 166 days, from 3/28/2018 to 9/10/2018 (at \$1200/day = \$199,200). Liquidated damages will be withheld from the contractor and will be paid to the engineer for unscheduled engineering expenses (part of the net \$250,000 to be paid to them). GM Donnelly recommended the Board approve CO#10 increasing the construction contract by \$500,000 + a net increase of 133 days. Director Sullivan moved to approve CO#10. After brief discussion Director Amend made a motion to amend Director Sullivan's main motion to acknowledge CO#10 results in 166 days of liquidated damages totaling \$199,200 and seconded the main motion. Director Sullivan concurred to the amendment and asked that it be included in the main motion. There was no more Board discussion. The motion carried 3-0. GM Donnelly noted that there is an MOU drafted which stipulates all 3 parties will refrain from litigation, but advised that the District should wait until USDA has signed off on CO#10, before the Board considers the MOU.

Discussion and Decision on Engineer Amendment #11 Authorizing Additional Engineering Services for Inspection Related to the Wastewater Construction Project

GM Donnelly stated he can't recommend approval of EA#11 at this meeting due to an outstanding legal question. EA#11 as written includes \$50,800 for additional engineering services, plus \$5000 for additional grant administration, and also includes \$199,200 for unscheduled engineering. The question pending is should the engineering contract be amended to include this unscheduled engineering, or is the language in the construction contract sufficient which states if there is unscheduled engineering, it shall be taken out of liquidated damages and paid to the engineer. GM Donnelly recommended deferring action on EA#11 until this question is answered, but noted that ultimately, he will recommend approval of the final amount. The Board agreed to defer action on EA#11. Mr. Thomson noted that Greg Benjamin is pushing for resolution prior to year-end, and it was agreed to by all that another special meeting next week would be prudent.

President Border then asked for unanimous consent to adjourn. Seeing no objection, the meeting was adjourned at 3:25 p.m.

Secretary