

## INFORMATIONAL MEMORANDUM

TO: Transportation and Infrastructure Committee  
FROM: Henry Hash, Public Works Director *H.H.*  
BY: Peter Lau, Senior Program Manager  
CC: Mayor Allan Ekberg  
DATE: July 6, 2018  
SUBJECT: 42<sup>nd</sup> Avenue South Phase III & Gilliam Creek Culvert Replacement Projects  
Project Nos. 99410303 & 99341208, Contract No. 17-090  
Change Order No. 3

### ISSUE

Approve Change Order (CO) No. 3 with Active Construction, Inc. (ACI) to resolve all outstanding claims and disputes for the 42<sup>nd</sup> Avenue South Phase III Project.

### BACKGROUND

The 42<sup>nd</sup> Avenue South Phase III Project has been challenging. Due to unexpected issues such as excessive ground water, utility conflicts, and working through the winter, there have been construction delays and cost overruns. However, due to a change in direction and negotiating with ACI to develop a better partnership, significant progress has recently been made. Despite all of the challenges, we anticipate that substantial completion of 42<sup>nd</sup> Ave S will remain close to the original date this fall. Curb and gutters were installed in early June and the first lift of asphalt was placed on 6/25/18 and the road was reopened, as was committed by staff.

### DISCUSSION & FISCAL IMPACT

After numerous negotiation meetings with ACI and Public Works staff, with assistance from the City's legal department, CO No. 3 was mutually agreed to by all parties. CO No. 3 will alter the current procedures of construction philosophy. The execution of CO No. 3 will relieve some of the cost overruns and avoid potential and costly claims and delays, while improving efficiency and productivity.

Change Order No. 3 proposals include:

- transforms the project culture from spending much of ACI's and City's project staff time on assessing and quantifying disputes, to having both parties working cooperatively in order to complete the construction project as soon as possible;
- allows City's project staff to work with ACI's construction crews directly as a team, in order to efficiently finish the construction project at the least amount of cost;
- compensates ACI for the actual construction costs plus a 14% mark-up, which includes costs for bond, insurance, other general and administrative overhead costs, and profit;
- resolves all outstanding disputes between the City and ACI, and agrees not to pursue legal action against each other when this CO is strictly followed;
- and requires ACI to complete the construction project by November 13, 2018, weather permitting and timely utility work completion.

The table below shows the project budget and expenditures, including CO No. 3:

	<u>Design</u>	<u>CM</u>	<u>Construction</u>	<u>Budget</u>
CH2M Hill Design	\$1,563,995			\$1,611,000
AECOM Original CM & Sup #1		\$1,768,424		1,222,000
CH2M Hill Supplemental No. 7 & 8		79,272		
AKANA Consultant Contracts		79,450		
Widener & WSDOT JA 9753		18,000		
Active Construction Contract 17-090			\$6,599,266	6,933,000
Active Change Order Nos. 1 & 2 SWM			916,864	1,000,000
Active Construction CO No. 3 w/ sales tax			<u>2,741,136</u>	<u>1,008,000</u>
Total	<u>\$1,563,995</u>	<u>\$1,945,146</u>	<u>\$10,257,266</u>	
Grand Total			<u>\$13,766,407</u>	<u>\$11,774,000</u>
Cost Overrun			<u>\$ 1,992,407</u>	

To pay for the \$1,992,407 cost overrun, staff is proposing the following funding sources:

104 Fund - South 144 <sup>th</sup> Street Phase 2 Project Surplus	\$ 230,000
104 Fund - 2018 Overlay & Repair Surplus	40,000
A Budget Amendment from Utilities	474,961
A Budget Amendment from 412 Surface Water Fund	<u>1,247,446</u>
Total	<u>\$1,992,407</u>

### RECOMMENDATION

Council is being asked to approve CO No. 3 to Contract No. 17-090 with ACI in the amount of \$2,428,504.03 for the 42<sup>nd</sup> Ave S Phase III and Gilliam Creek Culvert Replacement Projects and consider this item on the Agenda at the July 16, 2018 Regular Meeting.

Attachment: Change Order No.3



# CITY OF TUKWILA CONTRACT CHANGE ORDER NO. 3

DATE: June 21, 2018

BUDGET NOs.: 103.98.595.300.65.00  
412.98.594.382.65.00

PROJECT NO.: 99410303

CONTRACT NO.: 17-090

PROJECT NAME: 40<sup>th</sup> – 42<sup>nd</sup> Avenue South Phase III Project

TO: Active Construction, Inc.

You are hereby directed to make the herein described changes to the plans and specifications or do the following described work not included in the plans and specifications on this contract:

NOTE: This change order is not effective until approved by the "Owner" and a notice to proceed is issued.

**Conditions:**

- A. The following change, and work affected thereby, are subject to all contract stipulations and covenants;
- B. The rights of the "Owner" are not prejudiced;
- C. All claims against the "Owner" which are incidental to or as a consequence of this change are waived; and
- D. The Contractor must submit all Field Overhead and Home Office Overhead Rates for approval in advance of all change orders.

**CHANGE:**

See Attached Exhibit "A," incorporated herein by this reference.

We the undersigned Contractor, have given careful consideration to the change proposed and hereby agree, if this proposal is approved, that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept the prices shown above and below as full payment for .

ACCEPTED: Date 6/22/2018

Contractor: Active Construction, Inc.

By GREG GEBHARD

Title PROJECT ENGINEER

Original Contract (without tax) \$6,599,266.04

APPROVED BY THE CITY OF TUKWILA

Previous Change Order \$ 916,863.94

Date \_\_\_\_\_

This Change Order (without tax) \$2,428,504.03 (to be finalized)

By \_\_\_\_\_

Mayor

REV. CONTRACT AMOUNT \$9,944,634.01 (to be finalized)

Previous Contract Time: 200 Working Days

City Engineer \_\_\_\_\_

Additional Contract Time for this Change Order: 121 Working Days

Updated Contract Time: 321 Working Days

ORIGINAL: City Clerk (1 of 2)  
Contractor (2 of 2)  
PW Project Finance File

cc: Finance Department (w/encumbrance)  
Project Management File

# 40<sup>th</sup> – 42<sup>nd</sup> Avenue South Phase III Project

## Contract Change Order No. 3

### EXHIBIT A

#### DESCRIPTION OF WORK

Due to numerous challenges with the project and unexpected condition changes in the field, assessing, quantifying and determining the necessary and applicable contract changes has become a difficult task for both the City and the Contractor (ACI).

In the spirit of cooperation and in order to move the project forward in the most expeditious and financially responsible manner, the City and ACI have mutually agreed to work collaboratively to complete the project by or before November 13, 2018. The City agrees to compensate the contractor for the actual cost of construction, plus an additional 14% markup on such actual cost to compensate ACI's general and administrative overhead cost, and profit.

The actual cost of this 40<sup>th</sup> – 42<sup>nd</sup> Avenue South Phase 3 Project refers to all the direct expenditures spent by the Contractor on this particular construction project, including the mobilization/field overhead cost. However, if the expenditure was caused by ACI's own negligence or error, such expenditure will not be counted as part of the actual costs to be paid by the City, and ACI will remain fully responsible for such expenditures. As for all the subcontracts among ACI and it's subcontractors, this Change Order (CO) #3 will not apply to any subcontracts executed prior to the execution of this CO #3, and all the corresponding Bid Items paying for these subcontracts. The City will just pay for these subcontract costs and an additional 14% markup. As a result, the existing payment mechanism among ACI and it's current subcontractors will be preserved. After the execution of CO #3, all new subcontracts among ACI and it's future subcontractors will be subjected to the same 14% mark-up as the subcontractors' direct costs.

ACI's actual cost for this 40<sup>th</sup> – 42<sup>nd</sup> Avenue South Phase 3 Project will be subject to a detailed review monthly before the issuance of the monthly pay estimate for such work, and before the issuance of the final payment by the City. At the option of the City, the actual cost reviews and verifications may be conducted by a Certified Public Accountant or other City of Tukwila designated representatives. The current projected total cost for ACI to complete this 40<sup>th</sup> – 42<sup>nd</sup> Avenue South Phase 3 Project is \$8,723,363.17, per the enclosed projected cost breakdown provided by ACI. Adding 14% to the projected cost of \$8,723,363.17, it would result in \$9,944,634.01 as the final cost.

The enclosed project schedule shows that the construction project is to be physically completed by November 13, 2018, or before. The parties agree that after the execution of this CO #3, the City's CM team will have the option of determining the means and methods of ACI in constructing this project.

The execution of this CO #3 supercedes the previous COs #1 and #2 on the payment and bid item parts, but the scope issues and Contract time increase will remain in effect. This CO #3 also supercedes all other applicable Contract terms and conditions of the 40<sup>th</sup> – 42<sup>nd</sup> Avenue South Phase 3 Project.

The parties agree that mutual execution of this CO #3 resolves any and all outstanding disputes between the parties relating to the Project, including any claims for prior delays, and ACI and the City hereby release each other from any such claims. Both the City and ACI agree not to pursue legal action against each others if both parties strictly abide by the terms of this CO #3. The parties agree to continue to discuss and negotiate when necessary, in order to resolve any additional Contract disputes that arise after the execution of this CO #3.

The City looks forward to continuing to work with ACI to complete this important project.

#### CONTRACT TIME

Currently,

- with Contract time of 200 working days after the execution of CO #2;
- suspension of work from November 18, 2017 to March 6, 2018, per the Project Specifications, Special Provisions, Section 1-08.6,

- and 5 weather days in working day accounted for as of the execution of this CO #3;

the Contract is scheduled to be completed by August 27, 2018. However, the suspension of work never actually occurred. Thus, an addition of 67 working days is needed to cover for the time between November 18, 2017 to March 6, 2018. By extending the project completion date to November 13, 2018, the Contract time will need to be increased by 121 working days total.

As part of this CO #3, the parties agree that the Contract time will not be extended further, even with the utility cutover work anticipated to be started in July 2018, with the exception of:

- weather related delays;
- further unanticipated delays caused by third party utilities beyond the 74 working days of utility cut over time from July 11, 2018 to October 23, 2018;
- delays encountered that are out of the control of the Contractor or the City;
- and unanticipated changes to the work where extension of Contract time would otherwise be determined in accordance with Section 1-08 of the WSDOT Standard Specifications, 2016 version.

Any determination made which authorizes additional Contract time will be performed on the project completion schedule provided in this CO.

**ACTIVE CONSTRUCTION, INC.**

**Job Overview Report as of 05/20/18**

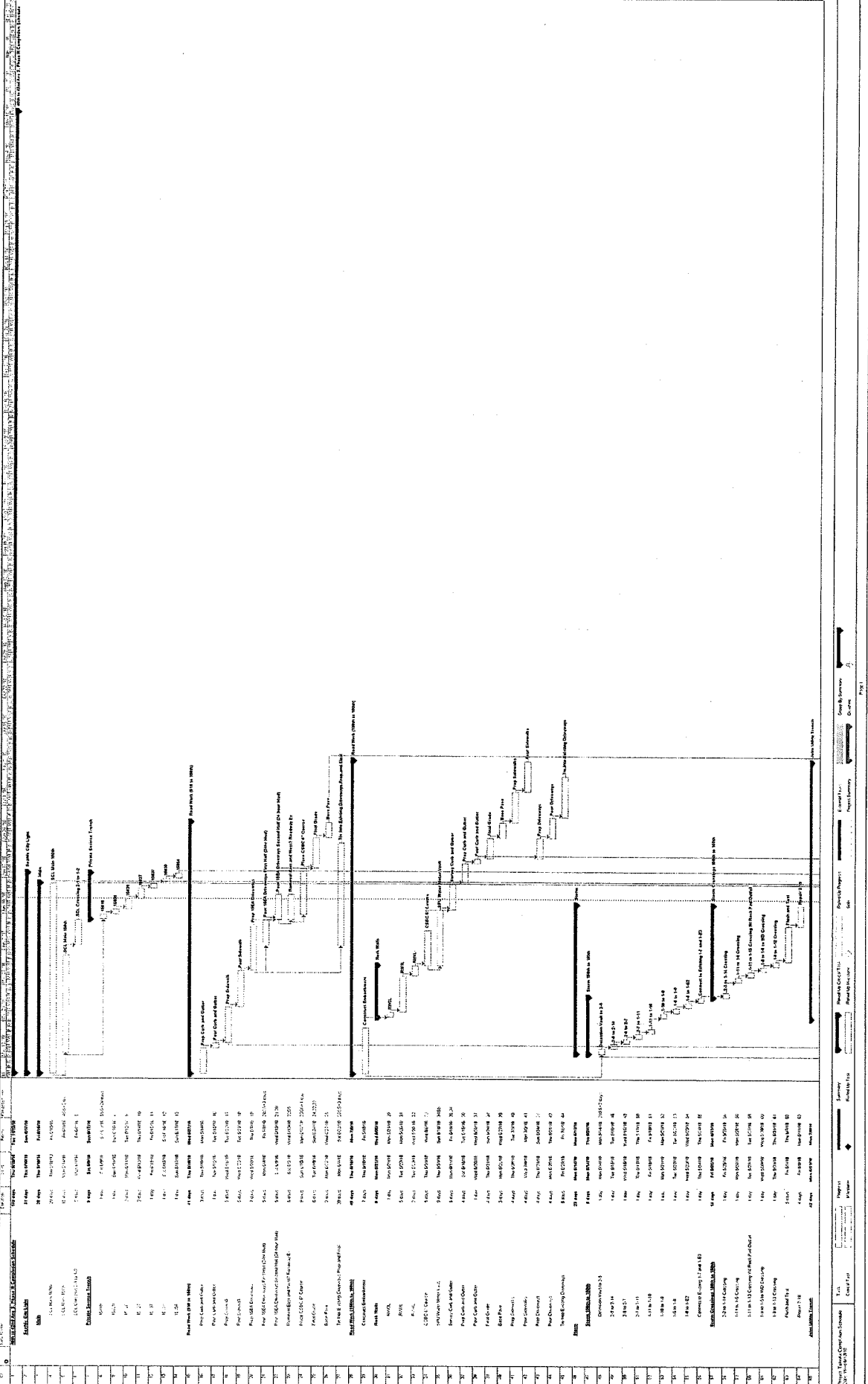
**Fiscal Year: 18 Period: 05**

<b>Job Number:</b> 17-007	<b>Division:</b> Active	<b>Customer Code:</b> TUKCIT
<b>Job Description:</b> 40th-42nd Ave S, Tukwila	<b>Job Status:</b> Active	<b>Customer Name:</b> TUKWILA CITY OF
<b>Phone:</b> R Heathers	<b>Estimated</b>	<b>Customer Phone:</b> (206) 431-3680
<b>Estimator:</b> C Roberts	<b>Actual</b>	
<b>Project Manager:</b> T Pelton	<b>Start Date:</b> Complete	
<b>Superintendent:</b>		

<b>% Complete:</b> 0.7583	<b>Billed (With Tax):</b> 5,882,524.83	<b>Original Contract:</b> 6,599,266.04
<b>% Billed:</b> 56.74	<b>Applied:</b> 5,043,969.97	<b>Executed Changes:</b> 916,863.94
<b>Billed To Date:</b> 5,740,828.09	<b>Balance:</b> 838,554.86	<b>Approved Changes:</b> 2,601,000.00
<b>Earned To Date:</b> 7,672,275.87	<b>Retention Bal:</b> 0.00	<b>Revised Contract:</b> 10,117,129.98
<b>Over / Under:</b> -1,931,447.78	<b>Current Due:</b> 838,554.86	<b>Proposed Changes:</b> 0.00

Cost Type	Hours			Costs to Date			Open Commitments
	Job to Date	Estimate	Variance	Job to Date	Projected	Variance	
1 LABOR & FRINGE:	44,185.00	20,739.95	23,445.05	2,495,824.16	3,058,688.27	1,641,730.40	81.60
2 MATERIALS				1,283,045.15	1,997,948.23	-446,258.97	80.29
3 MATERIALS TAXE				510.94	117,989.00	9,652.83	0.43
4 SUBCONTRACTS				1,096,243.76	2,014,001.76	557,673.26	54.43
5 EQUIPMENT (C)	33,157.18	16,022.15	17,135.03	848,144.83	984,131.96	582,606.34	86.18
6 EQUIPMENT (R)				353,342.57	360,747.59	342,621.20	97.95
7 OTHER COSTS				127,153.19	134,880.22	78,925.22	94.27
8 EXCISE TAXES				27,601.39	47,311.00	15,369.00	58.34
9 INDIRECT O/H							
S OPERATED EQ (R)				383,453.66	407,665.14	375,016.64	94.06
<b>Job Totals:</b>	<b>77,342.18</b>	<b>36,762.10</b>	<b>40,580.08</b>	<b>6,615,319.65</b>	<b>8,723,363.17</b>	<b>3,157,335.92</b>	<b>75.83</b>
				<b>1,056,956.22</b>	<b>1,393,766.81</b>	<b>360,528.02</b>	
				<b>13.8%</b>	<b>13.8%</b>	<b>10.2%</b>	
				<b>16.0%</b>	<b>16.0%</b>	<b>11.4%</b>	

<b>Gross Profit:</b>	13.8%
<b>Gross Profit %:</b>	15.7%
<b>Percent of Cost:</b>	18.6%



Station	Structure	Material	Quantity	Unit	Notes
1	18\"/>				

