

COUNCIL AGENDA SYNOPSIS



-----Initials-----			
Meeting Date	Prepared by	Mayor's review	Council review
07/09/18	HH	<i>[Handwritten]</i>	<i>[Handwritten]</i>
07/16/18	HH		

ITEM NO.

3A

ITEM INFORMATION

CAS NUMBER: _____ STAFF SPONSOR: **HENRY HASH** ORIGINAL AGENDA DATE: **07/09/18**

AGENDA ITEM TITLE **42nd Ave S Phase III Project (S 160th St - Southcenter Blvd)
Construction Change Order No. 3 with with Active Construction, Inc.**

CATEGORY Discussion Motion Resolution Ordinance Bid Award Public Hearing Other

Mtg Date 07/09/18 Mtg Date 07/16/18 Mtg Date Mtg Date Mtg Date Mtg Date Mtg Date

SPONSOR Council Mayor HR DCD Finance Fire IT Pe/R Police PW

SPONSOR'S SUMMARY **Change Order No. 3 to Contract #17-090 is for additional construction costs for the 42nd Ave S Phase III Project. 42nd Ave S has had major issues with the Gilliam Creek Culvert and utility conflicts which have caused delays and cost overruns. After extensive negotiations, Active Construction's Change Order No. 3 will resolve all disputes and require that the project be substantially complete by November 2018. Council is being asked to approve Change Order No. 3 with Active Construction for \$2,741,136 (with sales tax).**

REVIEWED BY COW Mtg. CA&P Cmte F&S Cmte Transportation Cmte
 Utilities Cmte Arts Comm. Parks Comm. Planning Comm.

DATE: **07/09/18** COMMITTEE CHAIR: **THOMAS MCLEOD**

RECOMMENDATIONS:
 SPONSOR/ADMIN. **Public Works**
 COMMITTEE **Presented to TIC on same night, 7/9/18**

COST IMPACT / FUND SOURCE

EXPENDITURE REQUIRED	AMOUNT BUDGETED	APPROPRIATION REQUIRED
\$2,741,136.00	\$11,774,000.00	\$1,992,407.00

Fund Source: **103 RESIDENTIAL STREETS & SURFACE WATER (PAGES 2 & 100, 2017 CIP)**

Comments:

MTG. DATE	RECORD OF COUNCIL ACTION
07/09/18	
07/16/18	

MTG. DATE	ATTACHMENTS
07/09/18	Informational Memorandum dated 07/06/18
	Active Construction Change Order No. 3
	TIC Chair McLeod will report on action from Transportation & Infrastructure 7/9/18
07/16/18	



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: **42nd 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 42nd Avenue South Phase III Project.

BACKGROUND

The 42nd 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 42nd 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			2,741,136	1,008,000
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 th 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	1,247,446
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 42nd 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: 40th – 42nd 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

40th – 42nd 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 40th – 42nd 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 its 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 its current subcontractors will be preserved. After the execution of CO #3, all new subcontracts among ACI and its future subcontractors will be subjected to the same 14% mark-up as the subcontractors' direct costs.

ACI's actual cost for this 40th – 42nd 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 40th – 42nd 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 40th – 42nd 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.

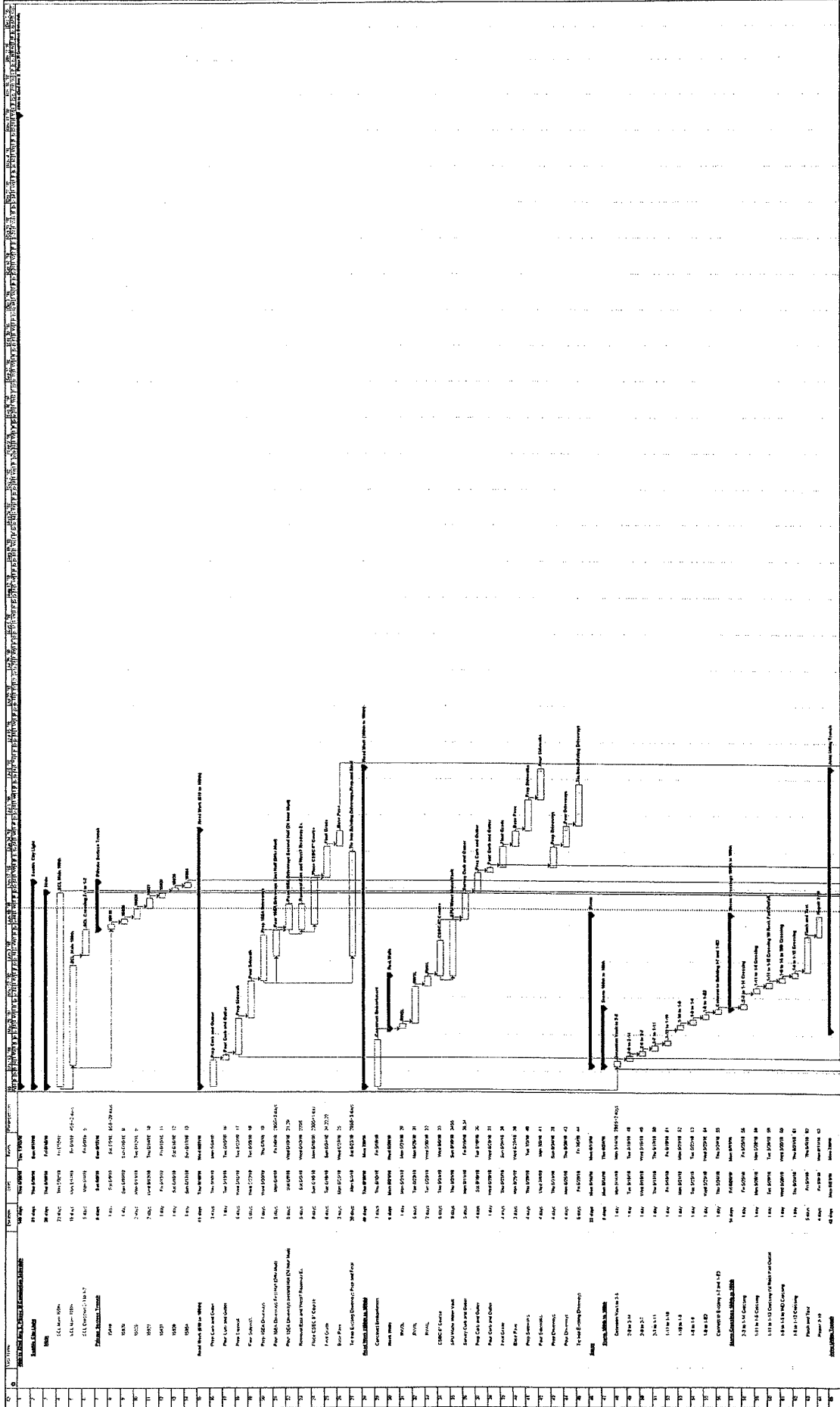
Job Overview Report as of 05/20/18

Fiscal Year: 18 Period: 05

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

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

Cost Type	Hours			Costs to Date			Open Commitments	
	Job to Date	Estimate	% Compl	Job to Date	Projected	Estimate		Variance
1 LABOR & FRINGE:	44,185.00	20,739.95	100.00	2,495,824.16	3,058,688.27	1,416,957.87	1,641,730.40	81.60
2 MATERIALS				1,283,045.15	1,597,948.23	2,044,207.20	-446,258.97	80.29
3 MATERIALS TAXE				510.94	117,989.00	108,336.17	9,652.83	0.43
4 SUBCONTRACTS				1,096,243.76	2,014,001.76	1,456,328.50	557,673.26	54.43
5 EQUIPMENT (C)	33,157.18	16,022.15	100.00	848,144.83	984,131.96	401,525.62	582,606.34	86.18
6 EQUIPMENT (R)				353,342.57	360,747.59	18,126.39	342,621.20	97.95
7 OTHER COSTS				127,153.19	134,880.22	55,955.00	78,925.22	94.27
8 EXCISE TAXES				27,601.39	47,311.00	31,942.00	15,369.00	59.34
9 INDIRECT O/H								
S OPERATED EQ (R)				383,453.66	407,665.14	32,648.50	375,016.64	94.06
Job Totals:	77,342.18	36,762.10	100.00	6,615,319.65	8,723,363.17	5,566,027.25	3,157,335.92	75.83
				Gross Profit: 1,056,956.22	1,393,766.81	1,033,238.79	360,528.02	
				Gross Profit %: 13.8%	13.8%	15.7%	10.2%	
				Percent of Cost: 16.0%	16.0%	18.6%	11.4%	



ID	Task Name	Start Date	End Date	Duration	Predecessors	Successors
1	Site Investigation	1998-01-01	1998-03-31	90		2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
2	Design of Main Structure	1998-04-01	1998-06-30	90	1	3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
3	Construction of Main Structure	1998-07-01	1998-09-30	90	2	4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
4	Final Commissioning	1998-10-01	1998-12-31	90	3	5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

