



INFORMATIONAL MEMORANDUM

TO: **Transportation & Infrastructure Committee**
 FROM: **Henry Hash, Public Works Director** *H.H.*
 BY: **Michael Ronda, Project Manager - Construction**
 CC: **Mayor Ekberg**
 DATE: **October 5, 2018**
 SUBJECT: **Andover Park East Water and Sewer Replacement**
Project Numbers 99940103 & 91440204
Construction Management Contract with AECOM

ISSUE

Approve a new Construction Management (CM) contract with AECOM Technical Services for CM support to close the Andover Park East (APE) Water and Sewer Replacement Project.

BACKGROUND

Council awarded the construction management contract for the APE Water and Sewer Replacement Project to AECOM in August 2016. During construction, several issues were discovered which extended the completion date of the project and required additional CM resources be dedicated to the management effort. Staff modified the CM scope with a new contract to cover the additional work and extended the contract time to allow for completion. Negotiations with the contractor, Titan Earthworks (Titan), on several disputed construction issues extended past the originally anticipated closure date. A new contract to complete the original scope of work is now needed. Because the extended negotiations with Titan involved very few AECOM resources, the CM contract expired before the previous budget was expended.

DISCUSSION & FISCAL IMPACT

Staff has reached an equitable settlement with Titan on the construction contract and now needs to close the project paperwork and accept the contract as complete. To complete the construction management effort, the AECOM CM team will require additional time and resources to close out the remaining paperwork and box the project files for potential audit. The total additional fee for this contract is \$18,349.65 and the CM budget will be allocated as follows:

	<u>CM Expense</u>	<u>Budget</u>
AECOM CM Contract Expenditures	\$615,699.42	
AECOM Closeout CM Contract	18,349.65	
APE Water/Sewer Replacement CM Budget		<u>\$640,000.00</u>
Total	<u>\$634,049.07</u>	<u>\$640,000.00</u>

RECOMMENDATION

Council is being asked to approve the construction management contract with AECOM in the amount of \$18,349.65 and consider this item on the Consent Agenda at the October 15, 2018 Regular Council Meeting.

Attachment: CM Consultant Services Contract Scope and Fee with AECOM



**CONSULTANT AGREEMENT FOR
CONSTRUCTION MANAGEMENT SERVICES**

THIS AGREEMENT is entered into between the City of Tukwila, Washington, hereinafter referred to as “the City”, and AECOM Technical Services, hereinafter referred to as “the Consultant”, in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. **Project Designation.** The Consultant is retained by the City to perform construction management services in connection with the project titled ‘Andover Park East Water Main and Sewer Replacements’.
2. **Scope of Services.** The Consultant agrees to perform the services, identified on Exhibit “A-1” attached hereto, including the provision of all labor, materials, equipment and supplies.
3. **Duration of Agreement; Time for Performance.** This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2018, unless sooner terminated under the provisions hereinafter specified. Work under this Agreement shall commence upon written notice by the City to the Consultant to proceed. The Consultant shall perform all services and provide all work product required pursuant to this Agreement no later than December 31, 2018 unless an extension of such time is granted in writing by the City.
4. **Payment.** The Consultant shall be paid by the City for completed work and for services rendered under this Agreement as follows:
 - A. Payment for the work provided by the Consultant shall be made as provided on Exhibit “B” attached hereto, provided that the total amount of payment to the Consultant shall not exceed \$18,349.65 without express written modification of the Agreement signed by the City.
 - B. The Consultant may submit vouchers to the City once per month during the progress of the work for partial payment for that portion of the project completed to date. Such vouchers will be checked by the City and, upon approval thereof, payment shall be made to the Consultant in the amount approved.
 - C. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this Agreement and its acceptance by the City.
 - D. Payment as provided in this section shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment and incidentals necessary to complete the work.
 - E. The Consultant’s records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City and the state of Washington for a period of three (3) years after final payments. Copies shall be made available upon request.

5. **Ownership and Use of Documents.** All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with the Consultant's endeavors. The Consultant shall not be responsible for any use of the said documents, drawings, specifications or other materials by the City on any project other than the project specified in this Agreement.
6. **Compliance with Laws.** The Consultant shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services rendered under this Agreement.
7. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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 Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

8. **Insurance.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. **Minimum Amounts and Scope of Insurance.** Consultant shall obtain insurance of the types and with the limits described below:

1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. **Commercial General Liability** insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. **Workers' Compensation** coverage as required by the Industrial Insurance laws of the State of Washington.

4. **Professional Liability** with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Professional Liability insurance shall be appropriate to the Consultant's profession.
 - B. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not be contributed or combined with it.
 - C. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
 - D. **Verification of Coverage.** Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. Certificates of coverage and endorsements as required by this section shall be delivered to the City within fifteen (15) days of execution of this Agreement.
 - E. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
 - F. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.
9. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Consultant nor any employee of the Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant.
10. **Covenant Against Contingent Fees.** The Consultant warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the City shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
11. **Discrimination Prohibited.** The Consultant, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation or the presence of any disability in the selection and retention of employees or procurement of materials or supplies.

12. **Assignment.** The Consultant shall not sublet or assign any of the services covered by this Agreement without the express written consent of the City.
13. **Non-Waiver.** Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.
14. **Termination.**
 - A. The City reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Consultant.
 - B. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Consultant and the City, if the City so chooses.
15. **Applicable Law; Venue; Attorney's Fees.** This Agreement shall be subject to, and the Consultant shall at all times comply with, all applicable federal, state and local laws, regulations, and rules, including the provisions of the City of Tukwila Municipal Code and ordinances of the City of Tukwila. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit. Venue for any action arising from or related to this Agreement shall be exclusively in King County Superior Court.
16. **Severability and Survival.** If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.
17. **Notices.** Notices to the City of Tukwila shall be sent to the following address:

City Clerk
City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188

Notices to Consultant shall be sent to the following address:

AECOM Technical Services
1111 3rd Avenue
Seattle, WA 98101
18. **Entire Agreement; Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. No amendment or modification of this Agreement shall be of any force or effect unless it is in writing and signed by the parties.

DATED this _____ day of _____, 20_____.

CITY OF TUKWILA

CONSULTANT

Allan Ekberg, Mayor

By: _____

Printed Name: _____

Title:

Attest/Authenticated:

Approved as to Form:

City Clerk, Christy O'Flaherty

Office of the City Attorney

Exhibit A-1
SCOPE OF SERVICES
Construction Management and Contract Administration Services for the
Andover Park East Water Main and Sewer Replacements

City of Tukwila

AECOM Technical Services, Inc. ("Consultant") proposes to provide to the City of Tukwila, Washington ("Client") construction management services for the Andover Park East (APE) Water Main and Sewer Replacement Project (hereinafter called "Project"). These services will include inspection, construction management, and contract administration assistance for the project as detailed in the following:

I. INTRODUCTION

The following scope of services is based upon the assumptions outlined herein. Associated costs are detailed in EXHIBIT B.

Assumptions:

- Services will be performed in accordance with the Local Agency Guidelines (LAG) and the WSDOT Construction Manual.
- **Design by Others:** It is understood and agreed that the Consultant did not prepare the Contract Documents for the project, and the Client will provide the Consultant the support of the Engineer-of-Record during the course of the Consultant's work.

I. DETAILED SCOPE OF WORK

Subtask 1 – Administration/Quality Control

Consistent with the hours shown in EXHIBIT B, the Consultant shall provide overall project management and contract administration associated with the service agreement between the Consultant and the Client. This effort will include the following elements:

- 1.1 Prepare of Consultant invoicing and progress reporting to the Client.
- 1.2 Perform internal administration of the Consultant's Task Order.
- 1.3 Prepare any supplements to the Consultant's Task Order.
- 1.4 Make periodic field visits and conduct project reviews for the quality of services provided by AECOM and consistency with AECOM's project quality plan.

Subtask 2 – Document Control

Consistent with the hours shown in EXHIBIT B, the Consultant shall provide document control services including the following elements:

- 2.1 Process; track and archive construction records including: Inspectors Daily Reports (IDR's); Requests for Information (RFI's); Submittals; Requests for Approval of Materials (RAM's); Statements of Working Days. Consultant shall maintain submittal and RFI logs to track when documents are received and returned to the contractor.
- 2.2 Review and archive project record documentation associated with prevailing wage reporting, including Requests to Sublet, Intents to Pay Prevailing Wage, Certified Payroll, Affidavits of Wages Paid, and Contractor employee wage interviews.
- 2.3 Maintain a list of approved change orders and potential change orders. Potential change orders will have a force account estimate of the extra work related to that item(s), until an approved change order is executed.

Subtask 3 – Field Inspection

The Consultant shall provide construction inspection services consistent with the hours shown in EXHIBIT B. This effort will include the following elements:

- 3.1 Prepare daily construction reports recording the contractor's operations performed for each day the Consultant is on site; measure the quantities of materials installed, log equipment and staff present, weather conditions, and any observed problems or construction issues.

Subtask 4 – Construction Management

Provide construction management services, consistent with the hours shown in EXHIBIT B. This effort will include the following elements:

- 4.1 Supervise contract close-out activities including as-built drawings, final payment, and completion notices. Consultant shall provide the Client, at contract close-out, construction records to the all applicable funding agencies.

III. Consultant Deliverables; including but not limited to:

- i. Inspector Daily Reports
- ii. Construction Photographs
- iii. Weekly Meeting Minutes and Agendas
- iv. Submittal, RFI, and Material Testing Logs
- v. Change Order Log
- vi. Monthly Contractor Pay Requests with field note record and quantity documentation
- vii. Punch-lists and tracking documentation
- viii. All Project Records received from the Contractor described under Subtask 2
- ix.** Other records generated as a result of this Contract, when requested by the Client, or as deemed necessary by a public record request.

IV. Responsibilities of the Client

- i. Provide CM oversight and approval authority for all construction activities.
- ii. Manage the Designer-on-Record team as part of the Project Designer's on-call design support and architectural submittal review.
- iii. Process all contract documents through the City's approval process (e.g. CM services invoices, construction contract, monthly pay estimates, change order execution, cost reduction proposals, time extensions, etc.).
- iv. Provide preferred forms and formats, and filing structure to the Consultant.
- v. Oversee the Consultant on conducting schedule evaluation, monitoring, and evaluate Time Impact Analysis for changes.
- vi. Provide and assist the Consultant in utility coordination with third-party utilities under project specific or franchise agreements.
- vii. Provide operations & maintenance interface with other City Staff for ongoing project issues.

APE Water Sewer Replacement
Exhibit B

Estimated Hours to Complete Project

1 - Admin/QC

Hours to complete		Raw Rate (Payroll Rate)	Raw Total	Billing Rate		Loaded Total	Employee
0	hours	\$ 74.80	\$ -	\$ 199.60	bill rate	\$ -	Perala
9.25	hours	\$ 36.00	\$ 333.00	\$ 96.07	bill rate	\$ 888.61	Rockwell
0.75	hours	\$ 33.40	\$ 25.05	\$ 89.13	bill rate	\$ 66.85	Neal
4	hours	\$ 74.80	\$ 299.20	\$ 199.60	bill rate	\$ 798.42	Perala
8	hours	\$ 36.00	\$ 288.00	\$ 96.07	bill rate	\$ 768.53	Rockwell
4	hours	\$ 33.40	\$ 133.60	\$ 89.13	bill rate	\$ 356.51	Neal
	hours	\$ 34.06	\$ -	\$ 82.30	bill rate	\$ -	Eilenberger
16	Total Hours				Total Loaded (revenue)	\$ 2,878.91	

2 - Doc Control

Hours to complete		Raw Rate (Payroll Rate)	Raw Total	Billing Rate		Loaded Total	Employee
0	hours	\$ 30.84	\$ -	\$ 96.07	bill rate	\$ -	Shinsato
60	hours	\$ 36.00	\$ 2,160.00	\$ 96.07	bill rate	\$ 5,763.96	Shinsato
0	Total Hours				Total Loaded (revenue)	\$ 5,763.96	

3 - Inspection

Hours to complete		Raw Rate (Payroll Rate)	Raw Total	Billing Rate		Loaded Total	Employee
2	hours	\$ 58.67	\$ 117.34	\$ 156.56	bill rate	\$ 313.12	Vaughn
60	hours	\$ 58.67	\$ 3,520.20	\$ 156.56	bill rate	\$ 9,393.65	Vaughn
60	Total Hours				Total Loaded (revenue)	\$ 9,706.78	

Costs for services between June 30 and October 1 = \$ 1,268.58

Total Additional Costs = \$ 17,081.07

Total to Complete = \$ 18,349.65

- Remaining Budget = \$ 7,194.42 Contract 18-051

Added Budget Required = \$ 9,886.65