

COUNCIL AGENDA SYNOPSIS



-----Initials-----				ITEM No. 4.C.
<i>Meeting Date</i>	<i>Prepared by</i>	<i>Mayor's review</i>	<i>Council review</i>	
05/20/19	HH	<i>H.H. [Signature]</i>	<i>RQH</i>	

ITEM INFORMATION

STAFF SPONSOR: HENRY HASH		ORIGINAL AGENDA DATE: 05/20/19	
AGENDA ITEM TITLE 42nd Ave S Phase III Project (S 160th St - Southcenter Blvd) Construction Change Order No. 4 with with Active Construction, Inc.			
CATEGORY <input type="checkbox"/> Discussion <i>Mtg Date</i>	<input checked="" type="checkbox"/> Motion <i>Mtg Date 05/20/19</i>	<input type="checkbox"/> Resolution <i>Mtg Date</i>	<input type="checkbox"/> Ordinance <i>Mtg Date</i>
<input type="checkbox"/> Bid Award <i>Mtg Date</i>	<input type="checkbox"/> Public Hearing <i>Mtg Date</i>	<input type="checkbox"/> Other <i>Mtg Date</i>	
SPONSOR <input type="checkbox"/> Council <input type="checkbox"/> Mayor <input type="checkbox"/> HR <input type="checkbox"/> DCD <input type="checkbox"/> Finance <input type="checkbox"/> Fire <input type="checkbox"/> TS <input type="checkbox"/> P&R <input type="checkbox"/> Police <input checked="" type="checkbox"/> PW <input type="checkbox"/> Court			
SPONSOR'S SUMMARY Change Order No. 4 to Contract No. 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. 4 will resolve all disputes. Council is being asked to approve Change Order No. 4 with Active Construction for \$1,050,000.			
REVIEWED BY <input type="checkbox"/> C.O.W. Mtg. <input type="checkbox"/> CDN Comm. <input type="checkbox"/> Finance Comm. <input type="checkbox"/> Public Safety Comm. <input checked="" type="checkbox"/> Trans & Infrastructure <input type="checkbox"/> Arts Comm. <input type="checkbox"/> Parks Comm. <input type="checkbox"/> Planning Comm. DATE: 05/07/19 COMMITTEE CHAIR: ZAK IDAN			
RECOMMENDATIONS: SPONSOR/ADMIN. Public Works Department COMMITTEE Majority Approval; Forward to Regular Consent Agenda			
COST IMPACT / FUND SOURCE			
EXPENDITURE REQUIRED \$1,050,000.00	AMOUNT BUDGETED \$15,166,000.00	APPROPRIATION REQUIRED \$	
Fund Source: 103 RESIDENTIAL STREETS (PAGE 2, 2019 CIP) Comments:			
MTG. DATE	RECORD OF COUNCIL ACTION		
05/20/19			
MTG. DATE	ATTACHMENTS		
05/20/19	Informational Memorandum dated 05/03/19		
	Page 2, 2019 CIP		
	Active Construction's Change Order No. 4		
	Minutes from the Transportation and Infrastructure Committee meeting of 05/07/19		



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: May 3, 2019
SUBJECT: 42nd Avenue South Phase III & Gilliam Creek Culvert Replacement Projects
Project Nos. 99410303 & 99341208, Contract No. 17-090
Change Order No. 4

ISSUE

Approve Change Order (CO) No. 4 with Active Construction, Inc. (ACI) to resolve all new claims and disputes for the 42nd Avenue South Phase III Project.

BACKGROUND

Due to continuous issues with excessive ground water interference during excavation, changes and conflicts for Seattle City Light (SCL) facilities, design issues, some inefficiencies by the contractor, and other unanticipated utility conflicts, the 42nd Avenue South Phase III Project encountered schedule delays and cost overruns.

DISCUSSION

Change Order No. 3 was a compromise between the City and ACI to resolve outstanding construction disputes through May, 2018, which was approved by Council in July, 2018. The execution of CO No. 3 avoided potential claims and a possible legal battle with substantial legal fees by both parties and produced cost savings for the City. After the execution of CO No. 3, PW staff and ACI worked cooperatively together to move the project forward. However, for the reasons stated above and more unanticipated issues, the project cost overruns continued.

After extensive discussions and negotiations between PW staff and ACI, a mutual agreement was reached and both parties agreed that it is in their best interest to complete the project in the most efficient way possible. The new compromise is documented in Change Order No. 4.

In summary, CO No. 4 will:

- reduces the 14% mark-up rate (established in CO No. 3) to 12.5%, which still covers ACI's bond, insurance, other general and administrative overhead costs, and profit. This change will result in a savings of \$164,000 for the City;
- enables City project staff to continue to work cooperatively with ACI's construction crew, in order to efficiently complete the construction project with the least amount of cost;
- requires ACI to physically complete the project within six weeks after the utility conversion work is completed;
- resolves all outstanding claims and disputes between the City and ACI and agrees not to pursue legal action against each other when this CO is strictly followed.

FISCAL IMPACT

The table below shows the project budget and expenditures, with the inclusion of CO No. 4:

	<u>Design</u>	<u>CM</u>	<u>Construction</u>	<u>Budget</u>
CH2M Hill Design & Staff	\$1,563,995			\$1,564,000
AECOM Original CM & Sups No. 1 & 2		\$1,768,424		1,897,000
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	11,705,000
Active Change Orders No. 1 & 2			916,864	
Active Change Order No. 3 w/ sales tax			2,741,136	
Active Change Order No. 4 w/o sales tax			1,050,000	
Construction Contingency			349,593	
Total	<u>\$1,563,995</u>	<u>\$1,945,146</u>	<u>\$11,656,859</u>	
Grand Total			<u>\$15,166,000</u>	<u>\$15,166,000</u>

The current 2019 CIP project budget is sufficient to cover the cost of Change Order No. 4 and will leave a \$349,593 construction contingency. CO No. 4 would require an increase of 33 working days for ACI to physically complete 42nd Ave S Phase III construction project.

RECOMMENDATION

Council is being asked to approve Change Order No. 4 to Contract No. 17-090 with Active Construction, Inc. in the amount of \$1,050,000 for the 42nd Avenue South Phase III and Gilliam Creek Culvert Replacement Projects and consider this item on the Consent Agenda at the May 20, 2019 Regular Meeting.

Attachments: 2019 CIP, page 2
 Change Order No. 4

CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2019 to 2024

PROJECT: 42nd Ave South Phase III Project No. 99410303

DESCRIPTION: Design and construct street improvements, drainage, sidewalks, bike facilities, and driveway adjustments.

JUSTIFICATION: Provide pedestrian and vehicle safety, drainage, and neighborhood revitalization.

STATUS: Phase III (S/C Blvd (154th) - S 160 St), Design began in 2012, construction in 2017. Project No. 99410303

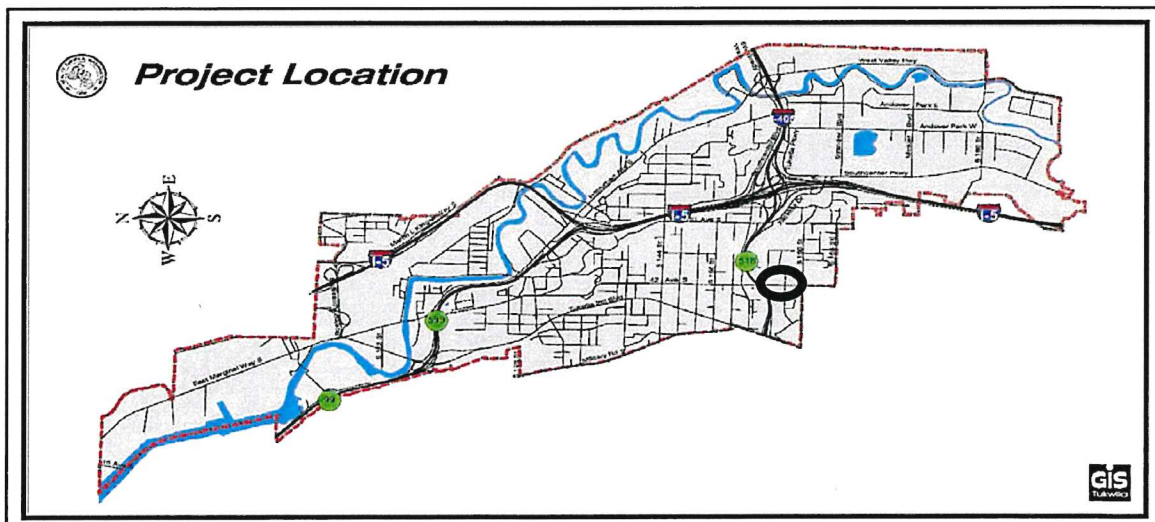
Phase IV (S 139 St - S 131 Pl) in beyond. Project No. 99410301

Phase I 90-RW15 (S/C Blvd (154) - 144 St) \$3,796 & Phase II 94-RS02 (144-139) \$1,850, both completed.

MAINT. IMPACT: Reduce pavement, shoulder, and drainage work.

COMMENT: Only Phase III is shown in active years. Project includes Surface Water's Gilliam Creek 42nd Ave S Culvert project for \$1.3m and is part of the Walk & Roll Plan. Seattle City Light's funding is a 60/40 underground split.

FINANCIAL (in \$000's)	Through 2017	Estimated 2018	2019	2020	2021	2022	2023	2024	BEYOND	TOTAL
EXPENSES										
Design	1,564									1,564
Land (R/W)										0
Const. Mgmt.	809	688	400							1,897
Construction	2,232	5,231	2,100							9,563
Undergrounding	508	1,634								2,142
TOTAL EXPENSES	5,113	7,553	2,500	0	0	0	0	0	0	15,166
FUND SOURCES										
Seattle City Light		1,285								1,285
Surface Water	1,415	2,881								4,296
Other Utilities	1	575								576
Bond	6,487									6,487
City Oper. Revenue	(2,790)	2,812	2,500	0	0	0	0	0	0	2,522
TOTAL SOURCES	5,113	7,553	2,500	0	0	0	0	0	0	15,166





CITY OF TUKWILA CONTRACT CHANGE ORDER NO. 4

DATE: April 15, 2019

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 4/16/2019

Contractor: Active Construction, Inc.

By _____

Title PM

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

APPROVED BY THE CITY OF TUKWILA

Previous Change Order \$ 3,345,367.97

Date _____

This Change Order (without tax) \$ 1,050,000.00

By _____

Mayor

REV. CONTRACT AMOUNT \$10,994,634.01

City Engineer thi Pa

Previous Contract Time: 321 Working Days
Additional Contract Time for this Change Order: 33 Working Days
Updated Contract Time: 354 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. 4

EXHIBIT A

DESCRIPTION OF WORK

Change Order (CO) #3 for the 40th – 42nd Avenue South Phase 3 Project, which was a compromise between the City and the construction contractor (ACI) on resolving all the outstanding construction disputes through May 20, 2018, was executed on July 17, 2018. However, three months after the execution of CO #3, ACI started to alert the City that the cost increase from CO #3 would be insufficient to pay for all the remaining contract works.

As a result, the City requested ACI to provide justifications for the cost increase beyond the new contract amount from CO #3. After reviewing ACI's provided cost increase justifications, the City contended that ACI was partially responsible for causing the additional cost increase. ACI disagreed with the City's contention. After months of further monitoring of the actual project cost increase, and negotiations between City project staff and ACI, another compromise has been reached between the parties. This new compromise is herein documented in this CO #4.

In this CO #4, the City and ACI have mutually agreed to work collaboratively to physically complete the project within 6 weeks after the utility conversion works were completed by all utility companies. The City also agrees to a reduction of the 14% markup rate (previously generated from CO #3) to 12.5%, of the actual overall cost of construction. The 12.5% markup is to compensate ACI's general and administrative overhead cost, and profit.

The actual overall cost of this 40th – 42nd Avenue South Phase 3 Project refers to all the direct expenditures spent by ACI on this particular construction project, includes the mobilization/field overhead cost, but excludes the indirect overhead cost. However, for costs incurred after the date of this CO #4, if the expenditure was caused by ACI's own negligence, such expenditure will not be counted as part of the actual project 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 CO #4 will not apply to any subcontracts executed prior to the execution of CO #3, and all the corresponding Bid Items paying for these subcontracts. The City will just continue to pay for these subcontract costs and with the new 12.5% markup. As a result, the existing payment mechanism among ACI and it's current subcontractors will continue to be preserved. After the execution of CO #4, all new subcontracts among ACI and it's future subcontractors will be subjected to the new 12.5% mark-up as the subcontractors' direct costs.

ACI's actual cost for this 40th – 42nd Avenue South Phase 3 Project will continue to 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 continue to 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 \$9,773,008.01, per the enclosed projected cost breakdown provided by ACI. Adding 12.5% to the projected cost of \$9,773,008.01, it would result in \$10,994,634.01 as the cost.

Both the City and ACI agree that after the execution of this CO #4, the City's construction management team will continue to have the option of determining the means and methods of ACI in constructing this project.

The execution of this CO #4 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 #4 also supercedes CO #3 on all applicable and conflicting Contract terms and conditions.

Both the City and ACI agree that mutual execution of this CO #4 continues to resolve 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 #4. 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 #4.

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

CONTRACT TIME

Per CO #3, the Contract time was to expire on November 13, 2018. CO #4 will add 33 working days to this Contract, since

- ACI vacated the project site on November 16, 2018, allowing the utility companies to continue the utility conversion works. Therefore, between November 13 and 16 of 2018, 3 working days of Contract time extension is needed.
- The construction project will be retroactively suspended starting from November 17, 2018, until the utility conversion works are completed.
- ACI will have 30 working days to complete all remaining works for the construction project, including all the punch list items.

Therefore, the Contract time will need to be increased by 33 working days total.

As part of this CO #4, the parties agree that the Contract time will not be extended further, with the exception of:

- weather related delays;
- 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.

Staff noted that this could be a policy issue and/or on the Council’s legislative agenda. Staff also noted that Tukwila has one staff and one business representative on Seattle City Light’s Review Panel. Chair Idan asked if staff could quantify the cost incurred by Seattle City Light related delays and staff will provide that information. Councilmember Kruller said she appreciated staff’s response to the resident who was unhappy with work occurring on the weekend without notification. **MAJORITY APPROVAL. FORWARD TO MAY 20, 2019 REGULAR CONSENT AGENDA.**

D. Change Order: 42nd Avenue South Phase III & Gilliam Creek Culvert



Staff is seeking Council approval of Change Order No. 4 with Active Construction, Inc. in the amount of \$1,050,000 to resolve all claims and disputes for the 42nd Avenue South Phase III Project. This project encountered schedule delays and cost overruns due to issues with excessive ground water interference during excavation, changes and conflicts for Seattle City Light facilities, design issues, contract inefficiencies, and other utility conflicts. Change Order No. 3 was negotiated to resolve outstanding disputes through May 2018 and avoided potential claims and legal fees, but unanticipated issues resulted in more costly delays. Change Order No. 4 was extensively negotiated and agreed to by both parties. It will reduce the 14% mark-up rate established in CO No. 3 to 12.5%, enable City staff to continue cooperative work with ACI, requires physical completion of the project within six weeks after utility conversion work is done, and resolves all outstanding claims and disputes with agreement for no future legal action. The current project budget is sufficient to cover the cost of Change Order No. 4 and leaves a \$349,593.00 contingency. Chair Idan mentioned the importance of the construction schedule. **MAJORITY APPROVAL. FORWARD TO MAY 20, 2019 REGULAR CONSENT AGENDA.**

E. Waste Management Contract Status Update

Staff updated the Committee on the ongoing negotiations with Waste Management. The current contract will expire on October 31, 2019 but has a provision for up to two 2-year extensions, which staff recommends pursuing due to the favorable rates. The contract extension proposal will be brought to the next Committee meeting. Terms will include a 5% rate increase and 10% utility tax increase for commercial customers and trash collection at the bus stops along Tukwila International Boulevard. The rates will still be comparatively favorable with these increases, which are due to the changes to the international recycling market and the impacts to roads by the heavy trucks. Councilmember Kruller expressed concerns about impacts to the business community. Councilmember Hougardy said that it will be important to consider the history of the issue when the contract is next bid, and that messaging to the business community should include the information about the rate compared with other cities. Councilmember Kruller suggested reaching out to the Chamber. Waste Management will also be messaging the community about the increase. Chair Idan suggested that the Council would benefit from education on pavement conditions citywide. **DISCUSSION ONLY.**

III. SCATBd/RTC

There was no report.