



INFORMATIONAL MEMORANDUM

TO: **Community Services & Safety Committee**

FROM: **Kris Kelly, Parks & Recreation Parks Manager**

BY: **David Rosen, Parks & Recreation Fiscal Analyst**

DATE: **November 8, 2022**

SUBJECT: **Foster Golf Links Bathroom Water Main Line Repair Contract Approval**

ISSUE

A water main line break at Foster Golf Links (FGL) has caused a service disruption to a bathroom located on the course. Repair of said break requires use of services costing more than \$40,000, necessitating the need for council approval.

BACKGROUND

Foster Golf Links has a restroom located next to the 10th/11th hole that suffered a water main line break in September, since this break, restroom services have been offered on location via portable toilets.

DISCUSSION

Restoration of restroom services on the course is critical maintaining as high quality a customer experience as possible. Currently, replacement service is being provided via portable toilets, generating additional ongoing costs for operations. Lastly, failure to perform this work now may cause it to be more expensive in the future should work ultimately be done, due to factors such as service availability and inflationary pressure on inputs for work such as materials and equipment.

FINANCIAL IMPACT

This specific service would be paid for exclusively from the Foster Golf Links (411) Fund. Therefore, no financial impact upon the General Fund is created by approval of this contract.

At this time, maximum spending for this item is estimated at \$72,675.12, some of this estimate includes finance charges that we do not believe will be incurred.

RECOMMENDATION

Department staff recommend the Community Services and Safety Committee approve this item to be forwarded to the November 28, 2022 Committee of the Whole and December 5, 2022 Regular Meeting for further consideration.

ATTACHMENTS

A --- Proposed Contract for Services (Contract Number TBD)

B --- Mr. Rooter of Western WA Estimates 240903846 & 240887370 (Exhibit A, Dated 9/14/22)



City of Tukwila

6200 Southcenter Boulevard, Tukwila WA 98188

Contract Number:

CONTRACT FOR SERVICES

This Agreement is entered into by and between the City of Tukwila, Washington, a non-charter optional municipal code city hereinafter referred to as "the City," and Mr. Rooter Plumbing, hereinafter referred to as "the Contractor," whose principal office is located at 2000 S 116th St. Seattle Wa. 98168.

WHEREAS, the City has determined the need to have certain services performed for its citizens but does not have the manpower or expertise to perform such services; and

WHEREAS, the City desires to have the Contractor perform such services pursuant to certain terms and conditions; now, therefore,

IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

- Scope and Schedule of Services to be Performed by Contractor.** The Contractor shall perform those services described on Exhibit A attached hereto and incorporated herein by this reference as if fully set forth. In performing such services, the Contractor shall at all times comply with all Federal, State, and local statutes, rules and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith. The Contractor shall request and obtain prior written approval from the City if the scope or schedule is to be modified in any way.
- Compensation and Method of Payment.** The City shall pay the Contractor for services rendered according to the rate and method set forth on Exhibit B attached hereto and incorporated herein by this reference. The total amount to be paid shall not exceed \$75,000.
- Contractor Budget.** The Contractor shall apply the funds received under this Agreement within the maximum limits set forth in this Agreement. The Contractor shall request prior approval from the City whenever the Contractor desires to amend its budget in any way.
- Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing November 14, **20 22**, and ending February 1st, **2023**, unless sooner terminated under the provisions hereinafter specified.
- Independent Contractor.** Contractor and City agree that Contractor 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 Contractor nor any employee of Contractor 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 contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor.
- Indemnification.** The Contractor shall defend, indemnify and hold the Public Entity, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the Public Entity.

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 Contractor and the Public Entity, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor'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.

7. **Insurance.** The Contractor 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 Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor 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 Scope of Insurance.** Contractor 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 \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit. Commercial General Liability insurance shall be as least at broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. **Public Entity Full Availability of Contractor Limits.** If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.

C. **Other Insurance Provision.** The Contractor'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 Contractor's insurance and shall not contribute with it.

D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

- E. **Verification of Coverage.** Contractor 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 Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.
- F. **Subcontractors.** The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the Public Entity is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.
- G. **Notice of Cancellation.** The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.
- H. **Failure to Maintain Insurance.** Failure on the part of the Contractor 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 Contractor 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 Contractor from the City.

8. Record Keeping and Reporting.

- A. The Contractor shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Agreement and other such records as may be deemed necessary by the City to ensure the performance of this Agreement.
- B. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the office of the archivist in accordance with RCW Chapter 40.14 and by the City.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by law during the performance of this Agreement.

10. Termination. This Agreement may at any time be terminated by the City giving to the Contractor thirty (30) days written notice of the City's intention to terminate the same. Failure to provide products on schedule may result in contract termination. If the Contractor's insurance coverage is canceled for any reason, the City shall have the right to terminate this Agreement immediately.

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, the presence of any disability, or any other protected class status under state or federal law, in the selection and retention of employees or procurement of materials or supplies.

12. Assignment and Subcontract. The Contractor shall not assign or subcontract any portion of the services contemplated by this Agreement without the written consent of the City.

13. Entire Agreement: Modification. This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Contractor 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.

14. 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.

15. Notices. Notices to the City of Tukwila shall be sent to the following address:

City Clerk, City of Tukwila
6200 Southcenter Blvd.
Tukwila, Washington 98188

Notices to the Contractor shall be sent to the address provided by the Contractor upon the signature line below.

16. Applicable Law: Venue: Attorney’s Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. 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.

DATED this _____ day of _____, 20__.

City Signatures to be obtained by City Clerk’s Staff ONLY

CITY OF TUKWILA

CONTRACTOR

Allan Ekberg, Mayor

By: _____

Printed Name and Title: _____

ATTEST/AUTHENTICATED:

Address: _____

City Clerk, Christy O’Flaherty

APPROVED AS TO FORM:

Office of the City Attorney

Exhibit A



Mr. Rooter Plumbing of Western Washington
2000 S 116th St
Seattle, WA 98168
800-845-3107 Customer Service

BILL TO

City of Tukwila*
14000 Interurban Ave S
Tukwila, WA 98168 USA

ESTIMATE 240887370	ESTIMATE DATE Sep 14, 2022
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JOB ADDRESS

City of Tukwila
14000 Interurban Avenue South
Tukwila, WA 98168 USA

Job: 240874390
Technician: Scott Roderick

TASK	DESCRIPTION	QTY	PRICE	TOTAL
9910003	Additional Plumbing Service: Additional Plumbing Service	1.00	\$4,600.00	\$4,600.00
	Have leak in parking lot on pvc line. Will cut out section of asphalt, dig down to expose line and make repair. Backfill to rough grade and patch with asphalt.			

SUB-TOTAL	\$4,600.00
TAX	\$464.60
TOTAL	\$5,064.60
EST. FINANCING	\$110.41

CREDIT CARD PAYMENT AUTHORIZATION

Please pay total due amount. Thank you.

Print Name below as it appears on credit card

Payment Type	Credit Card #	EXP	CVC
Name on card			
Signature			
Remit to:			

Amount Due:

CUSTOMER AUTHORIZATION

IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract, if you sign this contract and you fail to meet the terms and conditions of this contract you may lose legal ownership rights to your

home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW. YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT THE 3RD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION, SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT. I agree that initial price quoted prior to start of work does not include any additional or unforeseen tasks. Nor materials which may be found to be necessary to complete repairs or replacements. I also agree to hold Mr. Rooter or its assigns harmless for parts deemed corroded, unusable, or unreliable for completion of stated work to be done. I hereby authorize Mr. Rooter to perform proposed work and agree to all agreement conditions as displayed on this page and the following two pages of this document and further acknowledge that this invoice is due upon receipt. A monthly service charge, at maximum allowed by law, will be added after 10 days. Independently owned and operated franchise.

Sign here

Date

WARRANTY

NEW MATERIALS INSTALLATION: Mr. Rooter Plumbing warrants new materials installed for one year after installation and labor on new materials installed for (90) days. **REPAIRS OTHER THAN DRAIN CLEANING:** Mr. Rooter Plumbing warrants labor on repairs, other than drain cleaning, for ninety (90) days after the repair work is complete. Mr. Rooter Plumbing warrants new materials installed as part of a repair for one year after installation.

DRAIN CLEANING: Unless otherwise agreed in writing, Mr. Rooter Plumbing warrants labor only on drain cleaning for seven days.

NO OTHER WARRANTIES: No other warranties, express or implied, are made with respect to new material installation, repairs, drain cleaning or any other work performed by Mr. Rooter Plumbing. Purchaser's exclusive remedy for breach of the preceding warranties is to require, at Mr. Rooter Plumbing's option, refund of the purchase price, repair, replacement, or re-cleaning. **THE PRECEDING WARRANTY IS IN LIEU OF AND MR. ROOTER PLUMBING HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY.**

LIMITATION OF DAMAGES: Mr. Rooter Plumbing assumes no responsibility for and shall not be liable to Purchaser for consequential damages incurred by Purchaser in connection with this contract including, without limitation, damage to property or injury to persons resulting from any breach of this agreement by Mr. Rooter Plumbing or any breach of warranty by Mr. Rooter Plumbing.

NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no. MROOP*022NE, as a general/specialty contractor and has posted with the state a bond or cash deposit of \$6000/\$4000 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business. This bond or cash deposit may not be sufficient to cover a claim which might arise from the work done under your contract. If any supplier of materials used in your construction project or any employees of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property may be liened to force payment. If you wish additional protection, you may request the contractor to provide you with original "lien release" documents from each supplier or subcontractor on your project. The contractor is required to provide you with further information about lien release if you request it. General information is also available from the Washington State Department of Labor and Industries.

This contract shall be governed by the laws of the state of Washington. Venue for any lawsuit arising out of this contract shall be the Superior Court of King County.

It is further agreed that: *Mr. Rooter Plumbing shall not be responsible for damages or delay due to strikes, fires, accidents, or other causes beyond our control. *Mr. Rooter Plumbing carries Public Liability Insurance, but does not assume risk of any character under the contract other than that covered by such insurance. A copy of our policy is available for inspection upon request. *This contract does not include any painting, gutter work or repairs to building other than specified above. *Any alteration or deviation from the above specifications involving extra cost of material or labor will only be executed upon written orders for same, and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing. This agreement constitutes the entire contract between the parties. *Concrete slab or foundation will not be warranted for cracks, separation, etc., or in the presence of hydro undermining, ground setting, storage of extra heavy machinery or equipment, unless it has been submitted to a soil analysis or structural design reinforcing steel. *Any salvageable material realized during demolition process becomes the property of Mr. Rooter. *Any dumping fees or hauling away of discarded material, not included in contract price unless otherwise specified. *All changes in the above contract must be in writing and signed by both parties hereto. The owner agrees to carry fire and all necessary insurance. Mr. Rooter Plumbing agrees that all workers are fully covered by Workmen's Compensation Insurance. All surplus materials remain the property of Mr. Rooter Plumbing.

1. When our services include backfilling, the backfill will be compacted but some settlement may occur due to soil and other conditions. We do not warrant that post installation settlement will not occur, and Mr. Rooter Plumbing will not be responsible for damage caused by such settlement for restoration.
2. Obstacles unforeseen at the date of this contract, such as solid rock, concrete, boulders, buried stumps, excessive water or any other object which gives rise to extraordinary excavation problems shall entitle Mr. Rooter Plumbing to be paid on a cost plus materials basis as per 8th Edition City of Seattle Plans & Specs., Div. 1, Section 9 Subsection 9.04, over and above the amount shown hereinafter of the price schedule.
3. Mr. Rooter Plumbing shall not be held responsible for replacement of fences or lawn or unmarked pipe or other invisible improvements that may be disturbed in the process of said construction, unless specified herein.
4. Notice is hereby given that a lien may be claimed for all labor, material and supplies furnished by Mr. Rooter Plumbing in connection with this contract.

Arbitration Clause:

AGREEMENT TO ARBITRATE. You and we agree to submit any dispute arising under this agreement, with the exception of disputes alleging criminal or statutory violations, to binding arbitration in accordance with the BBB Rules of Binding Arbitration (Pre-Dispute). A volunteer BBB arbitrator will render a decision that the arbitrator considers to be fair; in doing so, the arbitrator is not required to apply legal principles. The arbitrator's decision will be final and binding on both you and us, and judgment on the decision may be entered in any court having jurisdiction. All administrative fees for the arbitration will be paid by the business. Further information about BBB arbitration may be obtained by contacting the BBB Northwest at 208-342-4649. This Agreement to Arbitrate affects important legal rights. Neither of us will be able to go to court for disputes that must be arbitrated.

CITY OF SEATTLE CHARGE-BACKS

The City of Seattle will invoice Mr. Rooter Plumbing for: **1. Road Restoration 2. Inspection Fees.** These charges are a result of the work described in this contract. The amount invoiced by the City of Seattle will be marked up by a factor of 20% before presentation to you for payment by Mr. Rooter Plumbing. Charges from the City of Seattle are not included in the price on the original contract and will be invoiced at a later date.

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