



INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**
FROM: **Hari Ponnekanti, Public Works Director/City Engineer**
BY: **Adib Altallal, Utilities Engineer**
CC: **Mayor Allan Ekberg**
DATE: **September 10, 2021**
SUBJECT: **Macadam Rd S Water Upgrade Project- Design Supplement**
Project No. 90440105
Contract No. 15-116, Change Order No. 4

ISSUE

Approve supplemental agreement for Contract No.15-116 with PACE Engineers Inc. (PACE) for the Macadam Rd S Water Upgrade.

BACKGROUND

In 2015, the City contracted with PACE as the design consultant for the Macadam Rd S Water Upgrade Project, along with the Andover Park E Water & Sewer Improvements under Contract No. 15-116. In 2017, the design was put on hold due to construction cost estimates coming in higher than proposed in the 2019-2024 Capital Improvement Program. Due to limited fire flow issues, the project design contract was renewed and the project budget allocated was increased.

DISCUSSION

The project has been repeatedly prioritized as a critical Capital Improvement Project by the Water Department. City staff agreed upon the need for additional capacity and made the decision to change to a 12-inch pipe after two fires had erupted during Summer 2021 along the Macadam Road S waterline. The 12-inch pipe size will create plenty of redundant capacity and fire storage to minimize liability. PACE will also provide support during the bidding process, including preparing addenda, attending bid opening and construction meetings, as well as public outreach.

FINANCIAL IMPACT

The contract supplement is for \$27,600, which will bring the contract total to \$104,939.16 for the design services portion of the Macadam Rd S Water Upgrade. The project costs are within budget and are 100% funded by the water enterprise fund.

	<u>PACE Contract</u>	<u>2021-2023 Design Budget</u>
Original Contract	\$77,339.16	\$200,000.00
Supplement Contract	<u>27,600.00</u>	
Total	<u>\$104,939.16</u>	

RECOMMENDATION

Council is being asked to approve a supplemental agreement for design services with PACE in the amount of \$27,600.00 for the Macadam Rd S Water Upgrade Project and consider this item on the Consent Agenda at the September 20, 2021 Regular Meeting.

Attachments: 2021 CIP, Page 61
PACE Supplemental Agreement

CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

PROJECT: Macadam Rd S Water Upgrade

Project No. 90440105

DESCRIPTION: Design and construct 4,300 LF of 10" waterline in Macadam Rd S from S 144th St to Southcenter Blvd.

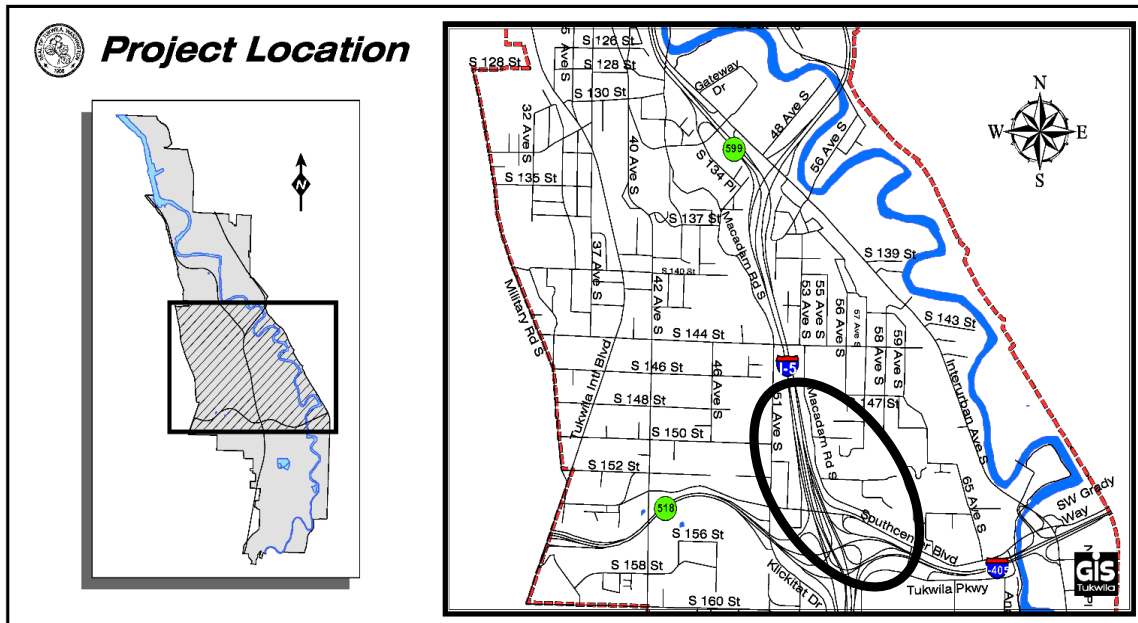
JUSTIFICATION: Improve fire flow water quality to the north side of Tukwila Hill.

STATUS: Project now scheduled for 2021/2022.

MAINT. IMPACT: The new waterline will eliminate maintenance time for flushing the dead end line while increasing service reliability.

COMMENT: Pedestrian/Bicycle Program grant for sidewalks unsuccessful in 2018, with water funds used as a match.

FINANCIAL (in \$000's)	Through Estimated									
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND	TOTAL
EXPENSES										
Design	68		100	50	50					268
Land (R/W)										0
Const. Mgmt.			250	50	300					600
Construction			300	300	950					1,550
TOTAL EXPENSES	68	0	650	400	1,300	0	0	0	0	2,418
FUND SOURCES										
Awarded Grant										0
Proposed Grant										0
Mitigation Actual										0
Mitigation Expected										0
Utility Revenue	68	0	650	400	1,300	0	0	0	0	2,418
TOTAL SOURCES	68	0	650	400	1,300	0	0	0	0	2,418





PROFESSIONAL SERVICES AGREEMENT

(Includes consultants, architects, engineers, accountants, and other professional services)

THIS AGREEMENT is entered into between the City of Tukwila, Washington, hereinafter referred to as “the City”, and PACE Engineers, Inc., 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 design and construction management services in connection with the project titled Macadam Rd S Water Upgrade.
2. **Scope of Services.** The Consultant agrees to perform the services, identified on Exhibit “A” 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, 2022, 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, 2022 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 \$27,600 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 \$2,000,000 each occurrence, \$2,000,000 general aggregate. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
3. **Workers' Compensation** coverage as required by the Industrial Insurance laws of the State of Washington.

4. **Professional Liability** with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit. Professional Liability insurance shall be appropriate to the Consultant's profession.
- 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 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.
- 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.** 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 Contractor before commencement of the work. Upon request by the City, the Consultant shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.
- F. **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.
- G. **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.** Contractor, 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.** 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:

PACE Engineers, Inc.
11255 Kirkland Way #300
Kirkland, Washington 98033-6715
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

PACE Engineers, Inc.

Allan Ekberg, Mayor

By: _____

Printed Name: Kenneth H Nilsen

Title: Executive Vice President

Attest/Authenticated:

Approved as to Form:

City Clerk, Christy O'Flaherty

Office of the City Attorney

Project Name: **Macadam Road ASA** Location: **Tukwila** Prepared By: **KN**
 Project #: Billing Group #: Task #: Date: **8/30/2021**

Staff Type # (See Labor Rates Table)	Staff Type Hourly Rate	Labor Hours by Classification										Hour Total	Dollar Total	
		1	13	118	75									
Drawing/Task Title	Job Title	Senior Principal Engineer	Sr. Project Engineer	Sr. Project Administrator	CAD Tech II									
Design Revisions		8	24	4	24								60.0	\$9,980
change Design from 8-inch to 12-inch at 95% submittal														
Develop overlay design options incl quantity takeoffs and cost est.														
Delay in project schedule														
Parking layout at north end adjacent to park														
Bid Support		10	67	7	10								94.0	\$17,071
RFI's		1	6	2	2								11.0	\$1,869
Bid Opening			3	1									4.0	\$685
Adendum		1	4	2	2								9.0	\$1,497
Submittal Reviews (assumes 16 @ 0.5 hr each)			8										8.0	\$1,488
Attend Biweekly meetings (assume 10 meetings @3 hrs each)		2	30										32.0	\$6,070
Public Outreach (prepare flyers, exhibits and attend two meetings @ 3 hrs each)		6	16	2	6								30.0	\$4,700
Hours Total		18.0	91.0	11.0	34.0								154.0	\$27,051.00
Labor Total		\$4,410	\$16,926	\$1,397	\$4,318									\$27,051.00

Expenses	rate/unit	Reimbursable	
		Quantity	Cost
Postage/Courier			
Plotter			
Photo/Video			
Mileage/Travel/Per Diem			
Miscellaneous			\$541.02
Total			\$541.02

Subconsultants	
Utility Locate	
Coating Insp	
Electrical Engineer	
Geotechnical Engineer	
I & C Engineer	
Subconsultant Subtotal	
Total	

Design Revisions	\$9,980.00
Bid support	\$17,071.00
Reimbursable Expenses	\$541.02
Subconsultants to complete	
TOTAL	\$27,592.02
Total Project ASA Budget Request	\$27,600.00