



I-10-013

Contract # 5848
(obtain from City Clerk)

CONTRACT REVIEW/APPROVAL ROUTING FORM

INSTRUCTIONS:

1. First time original contracts

- a. Contact City Clerk's Office for Contract Number
- b. One copy of the Contract Routing Form
- c. Two original contract documents

2. Amendments/Change Orders

- a. Contact City Clerk's Office for a NEW Contract Number
- b. One copy of the Contract Routing Form
- c. Two original amendments/change orders
- d. One copy of the original contract

CONTRACT DESCRIPTION

Originator:	John Vicente	Routed by:	Catherine Lander
Department/Division:	Public Works/Transportation Services	Date:	March 25, 2010
Type of Contract:	<input type="checkbox"/> (A) Addendum/Change Order <input type="checkbox"/> (W) Public Works <input type="checkbox"/> (O) Other <input type="checkbox"/> (GR) Grants <input type="checkbox"/> (S) Purchase of Services <input type="checkbox"/> (L) Lease Agreement <input checked="" type="checkbox"/> (I) Intergov't Agreement		
CONTRACT TITLE:	Aurora Corridor Improvement Project 185 th -192 nd SPU Utilities		
Brief Description of Services:	Reimbursement for utility design		
Contract Modification:	Has the original contract boilerplate language been modified?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<i>If yes, list which sections have been modified:</i>	SPU created contract		
Bid/RFP Number:	NA		
Name of Consultant/Contractor:	City of Seattle Public Utilities		
Effective Date:	Upon Execution	Termination Date:	NA

Total Amount of Contract (including reimbursable expenses):	NA		
Org Key – Obj Number:	Amount:	J/L Number (if required):	
Org Key – Obj Number:	Amount:	J/L Number (if required):	
Org Key – Obj Number:	Amount:	J/L Number (if required):	
Org Key – Obj Number:	Amount:	J/L Number (if required):	

Budget: Are there sufficient funds in the current budget to cover this contract? Yes No

If no, where are the additional funds coming from? NA

Payment Terms (monthly installments, progress payments, etc.): NA

Remarks: Agreement to be signed by City Manager BEFORE routing to Seattle Public Utilities

SIGNATURE ROUTING

<input checked="" type="checkbox"/> 1. Project Manager/Director	<input type="checkbox"/> 6. City Council approval (if required)
<input checked="" type="checkbox"/> 2. Risk Management/Budget	<input checked="" type="checkbox"/> 7. City Manager
<input checked="" type="checkbox"/> 3. City Attorney	<input checked="" type="checkbox"/> 8. City Clerk
<input checked="" type="checkbox"/> 4. Send to Consultant for signature (only contract documents)	<input checked="" type="checkbox"/> 9. Originating Department
<input checked="" type="checkbox"/> 5. Department Director	

Handwritten notes: 3/25/10, 3/29, APC 4/12/10, 5-17-2010 JLV

PRIOR TO EXECUTION – MUST BE ATTACHED

For Public/Small Works Contracts:	For Service Contracts:
<input type="checkbox"/> Contractor Responsibility Form <input type="checkbox"/> W-9 Form	<input type="checkbox"/> Certificate of Insurance
<input type="checkbox"/> Contract Bond/In Lieu of Form	<input type="checkbox"/> W-9 Form
<input type="checkbox"/> Certificate of Insurance	

Handwritten note: N/A



Memorandum

DATE: March 25, 2010

TO: Bob Olander, City Manager

VIA: Mark Relph, Public Works Director *MSR*
Kirk McKinley, Transportation Services Manager *KM*

FROM: John Vicente, Capital Projects Manager *JV*

RE: Aurora Corridor Improvement Project (N 185th – N 192nd Street)
City of Seattle, Seattle Public Utilities (SPU) Agreement regarding design improvements to water system

Agency Name and Project:

Seattle Public Utilities - Aurora Corridor Improvement Project (N 185th to N 192nd Street)

Background:

A portion of the water main on the west side of Aurora Avenue N within the project limits is impacted by the project. SPU has agreed to the relocation of the waterline that impacts the City's project. New services, if necessary, will be added. This satisfies SPU's requirements under the franchise and will accommodate future development while avoiding pavement cuts in the newly constructed improvements.

Scope of Agreement:

Detailed tasks for Shoreline and SPU for both design is listed in Appendix 1 of this agreement. At SPU's request, an amendment will be executed at a later date to cover construction reimbursement.

Selection Process:

N/A

Financial Impact:

Shoreline will design the improvements for SPU and will construct a significant portion of their improvements. Per the agreement, SPU will reimburse Shoreline for these costs. The design costs to be reimbursed are approximately \$54,000.

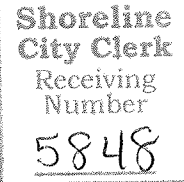
Council Review:

On October 26, 2009, Council authorized the HDR (design consultant) contract for \$1,778,572 plus a 10% contingency, to design Aurora from 185th – 192nd. The cost of the SPU design work was included within the original scope of work.

Schedule:

Design work is at 90% complete and a construction is estimated to begin in summer 2010.

ORIGINAL



**AGREEMENT REGARDING WATER SYSTEM
RELOCATION DESIGN IN AURORA AVENUE NORTH PHASE 3**

This Agreement Regarding Design Improvements to Water System in Aurora Avenue North, N. 185th to N. 192nd (the "Agreement") is made and entered into as of this 13th day of May, 2010 (the "Effective Date"), by and between the City of Seattle, a municipal corporation organized and existing under the laws of the State of Washington ("Seattle") acting by and through Seattle Public Utilities ("SPU"), and the City of Shoreline ("Shoreline") (collectively, the "Parties").

Recitals

WHEREAS, Shoreline intends to design and construct improvements to Aurora Avenue North between N. 185th Street and N. 192nd Street, in the City of Shoreline (the "Shoreline Improvements Project"); and

WHEREAS, Seattle owns and SPU operates a municipal water supply system in Shoreline under an existing Franchise Agreement (including infrastructure such as hydrants, services, valves, meters, fittings and mains, the "Water System"), a portion of which is located in Aurora Avenue North between N. 185th and N. 192nd (the "Water System Segment") consisting of a continuous 8" watermain along the western portion of Aurora Avenue North ("Watermain"); and

WHEREAS, construction of the Shoreline Improvements Project requires SPU to relocate the Watermain under Section 6.9 of the Franchise Agreement; and

WHEREAS, SPU wishes to contract with Shoreline to accomplish the design work for the required relocation of its Watermain ("Relocation Work") as part of the Shoreline Improvements Project design, which will result in more cost savings and efficient coordination between the projects; and

WHEREAS, both parties agree that integrating the Relocation Work into the overall Shoreline Improvements project design will allow any potential conflicts to be reviewed and resolved as part of the overall design process.

NOW THEREFORE, in consideration of the mutual promises set forth herein, Shoreline and SPU agree as follows:

Agreement

1. SCOPE OF WORK

- a. Prior to constructing the Relocation Work on the Water System Segment, design work is required. Shoreline and SPU will work together cooperatively to accomplish the design work through Shoreline's design

consultant, HDR Engineering, Inc. ("Consultant"). The design for the Relocation Work will consist of final design drawings stamped by a State of Washington licensed Professional Engineer ("PE"), final plans and specifications ("Plans and Specifications"), bid schedule, and engineer cost estimate for the Relocation Work ("Final Design"), as more particularly described in the Scope of Services from the Consultant, included as part of Appendix I.

- b. Shoreline shall perform all tasks listed in Appendix 1, section I, and SPU shall perform all tasks listed in Appendix 1, section II.
- c. SPU and Shoreline will continue to work together to finalize a mutually acceptable agreement for the construction phase of the Relocation Work, which will include provisions that: i) upon acceptance of the construction of the Relocation Work, SPU will own, operate and maintain the existing and relocated Water System Segment.

2. PAYMENT AND REIMBURSEMENT FOR RELOCATION WORK DESIGN COSTS:

- a. SPU will reimburse Shoreline an estimated total of up to \$54,000 for the Relocation Work design costs performed by Shoreline or its Consultant as more particularly described in Appendix 2. SPU will pay for Relocation Work design costs it performs.
- b. In the event changes to the Consultant design contract in accordance with that agreement increases the total Relocation Work design costs by more than 10 percent, Shoreline will submit a written request for the increase to SPU with reasonable supporting documentation prior to approval of the design work related to the Relocation Work. Upon review and written concurrence by SPU, SPU will reimburse Shoreline for these increased actual costs related to the Relocation Work, including delay cost Amendments, to the extent they are caused by SPU's actions or inactions. SPU shall not reimburse Shoreline for Amendments related to (a) Shoreline's or its design consultant's actions or inactions; (b) conflict between the location of existing or new SPU underground facilities and those of other utilities, to the extent that the design is based on information provided by Shoreline or Consultant; (c) Shoreline Improvements Project costs unrelated to SPU-relocation work.
- c. Shoreline will invoice SPU monthly for the Relocation Work design costs and SPU shall pay Shoreline within thirty (30) days of receipt of an approved invoice.

- d. All invoices to SPU with respect to the Relocation Work shall be documented to the reasonable satisfaction of SPU. In order to clarify or avoid payment disputes, Shoreline will provide SPU a reasonable opportunity to review and comment on Consultant's invoices prior to Shoreline approving and paying such invoices to Consultant.
- e. With respect to any disputed invoices, the Parties agree to negotiate in good faith for the resolution of the disputed amount in accordance with section 5. Any disputed amounts may be deducted from any monies due from one Party to another until such dispute is resolved.

3. DESIGN AND PLAN REVIEW

- a. Shoreline agrees the design for the Relocation Work will be in accordance with City of Seattle standard plans and specifications.
- b. SPU agrees that Shoreline may rely on all information related to the Relocation Work that is provided by SPU.
- c. SPU shall have final approval authority for design of the Relocation Work facilities that will become part of SPU's Water System. SPU and Shoreline each shall review all design plans and specifications provided, and concur that no conflicts exist between the design for the Shoreline Improvements Project and the Relocation Work. Except with respect to such conflicts, SPU's concurrence shall not be an approval, representation or warranty regarding the design of the Shoreline Improvements Project. Except with respect to such conflicts, Shoreline's concurrence shall not be an approval, representation or warranty regarding the Relocation Work.

4. RELEASE AND INDEMNIFICATION

To the extent permitted by law, Shoreline shall release, hold harmless, indemnify and defend Seattle, its officials, employees and agents, while acting within the scope of their employment, from any and all losses, damages, claims, demands, suits, judgments, and consultants', contractors' and attorneys' fees and costs (each, a "Claim" and collectively, "Claims") arising out of or resulting from the negligent acts or omissions, or intentional misconduct of Shoreline, its officials, employees, agents or consultants in connection with the performance of this Agreement or the Shoreline Improvements. Shoreline shall not be required to indemnify Seattle, its officials, employees or agents if the Claims arise out of or result from the sole negligence of Seattle, its officials, employees or agents.

To the extent permitted by law, Seattle shall release, hold harmless, indemnify and defend Shoreline, its officials, employees and agents, while acting within the scope of

their employment, from any and all losses, damages, claims, demands, suits, judgments, and consultants', contractors' and attorneys' fees and costs (each, a "Claim" and collectively, "Claims") arising out of or resulting from the negligent acts or omissions, or intentional misconduct of Seattle, its officials, employees, or agents in connection with the performance of this Agreement or the Shoreline Improvements. Seattle shall not be required to indemnify Shoreline, its officials, employees or agents if the Claims arise out of or result from the sole negligence of Shoreline, its officials, employees or agents.

To the extent a Claim arises out of the concurrent negligence of the parties, each party shall be responsible for its own negligence and that of its employees, agents or consultants.

The foregoing indemnities are specifically and expressly intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of Claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

5. DISPUTES

The Parties shall negotiate in good faith and use their reasonable best efforts to resolve any disputes that may develop under this Agreement. If the representative of the Parties identified in section 7 cannot resolve a dispute, the dispute shall be referred to the City of Shoreline Public Works Director and the Director of SPU for further negotiation. Only upon failure to resolve the dispute through such negotiations may either Party pursue legal action. The prevailing Party in any such action shall be entitled to its reasonable costs and expenses, including reasonable attorney's fees.

6. SEATTLE'S RELATION TO CONTRACTOR

With respect to the Shoreline Improvements Project only, Shoreline agrees that it shall assign to The City of Seattle all of the Consultant's representations, warranties and guarantees and that the City of Seattle is a third party beneficiary of the Consultant design contract with respect to the Relocation Work. Shoreline agrees that the contract between Shoreline and the Consultant will require that i) any insurance requirements name the City of Seattle as an additional insured with respect to the Relocation Work, and ii) the Consultant indemnify and defend the City of Seattle in the same manner and to the same degree as required by Section 4 hereof. Shoreline will provide a copy of this Agreement to its Consultant, once executed.

7. NOTICES

All notices required under the terms of this Agreement shall be given in writing, addressed as follows:

City of Seattle
Seattle Public Utilities
Seattle Municipal Tower
PO Box 34018
700 5th Avenue, Suite 4900
Seattle, WA 98124-4018
Attention: Warner Gee

City of Shoreline
17544 Midvale Ave N
Shoreline, WA 98133
Attention: John Vicente

All notices issued under this Agreement shall be deemed received on the next business day after being deposited in the United States mail in Seattle or Shoreline, or at the time they are actually hand delivered to the addressee. Either Party may revise the address or contact by providing the other party prompt written notice.

8. MISCELLANEOUS

- a. **Compliance with Laws:** Each Party shall perform its obligations under this Agreement in full compliance with all applicable federal, state and local laws, statutes, rules, regulations, orders and ordinances.
- b. **Applicable Law/Venue:** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be the state or federal courts located in King County, Washington.
- c. **No Waiver:** Neither acceptance of any Project Work performed nor acceptance of reimbursement therefore shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. Failure of either Party to insist upon strict performance of, or any other waiver of, any of the terms, conditions or obligations of this Agreement shall not be deemed a waiver of any other term, condition, covenant or obligation contained herein.
- d. **Validity of Contract:** In the event any section, sentence, clause, or phrase of this Agreement is adjudicated by a court of last resort and of competent jurisdiction to be invalid or illegal, the remainder of this Agreement shall be unaffected by such adjudication; and all other provisions of this Agreement shall remain in full force and effect as though the section, sentence, clause or phrase so adjudicated to be invalid had not been included herein.
- e. **Entire Agreement; Interpretation:** This Agreement reflects the understanding between the Parties regarding the matters covered herein, constitutes the entire agreement between the Parties, and incorporates all prior negotiations and agreements

of any kind, both written and oral. No representations, whether written or otherwise, between the Parties not contained or incorporated herein by reference shall be of any force or effect. This Agreement may be modified only by the written agreement of the Parties. This Agreement includes the Recitals and the following Appendices, which by this reference are incorporated herein:


- Appendix 1, Scope of Work
- Appendix 2, Water main design cost estimate
- Appendix 3, Water System Segment Map

f. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions herein contained in order to achieve the objectives and purposes of this Agreement. Each Party has reviewed and approved this Agreement. Each Party agrees that the usual rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, as follows:

THE CITY OF SEATTLE

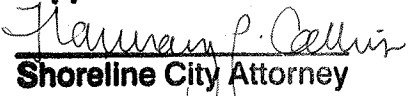
CITY OF SHORELINE

By: 
Ray Hoffman, Acting Director
Seattle Public Utilities

By: 
ROBERT L. OLANDER
Shoreline City Manager

Attachments:

- Appendix 1, Scope of Work
- Appendix 2, Water main design cost estimate
- Appendix 3, Water System Segment Map

Approved as to form:

Shoreline City Attorney

APPENDIX 1

Scope of Work

I. CITY OF SHORELINE TASKS:

Shoreline, acting directly or through its Consultant, shall perform the following tasks:

1. Prepare Relocation Work design drawings for the Water System Segment as described in the Agreement and review for and resolve any potential or apparent conflicts with the design documents for the overall Shoreline Improvements Project.
2. At the request of SPU, Shoreline shall provide, in connection with the engineering and design work, all records and information related to the Water System Segment or to other utility system infrastructure located within the Shoreline Improvements Project area.
3. Shoreline shall make any changes to the engineering and design drawings as mutually agreed upon by both Parties, and make changes to the Project schedule as necessary to respond to comments provided by SPU.
4. Track costs associated with Final Design preparation.
5. Shoreline shall obtain and pay for all permits required for the Relocation Work at Shoreline's expense. Shoreline shall provide for review and acceptance by SPU of all permits that need to be obtained on SPU's behalf.
6. At the request of SPU, Shoreline shall provide SPU with copies of all contracts and amendments Shoreline has executed with the design consultant.
7. Shoreline shall provide SPU with an overall schedule, including any amendments, for the Shoreline Improvements Project.
8. SPU will need a Plans and Specifications review cycle at a minimum of 60%, 90%, and 100% and final contract documents related to the Relocation Work.
9. Where water service taps have been or will be relocated, and private plumbing modifications are required for the affected property due to Relocation Work, Shoreline shall coordinate with the affected property owner to develop plans and specifications for these private plumbing revisions and to relocate private service prior to construction of the Relocation Work. Shoreline will be responsible for making the customer whole.
10. Shoreline will be responsible for obtaining and paying any related costs for any easements or property rights, in a form acceptable to SPU, for placing

Water System facilities outside of the public right-of-way and on private property, e.g. water meters that do not fit within the sidewalk, that may be required by the design of the Relocation Work.

11. Shoreline shall permit SPU crews to perform temporary restoration in the Relocation Work project area, as needed, prior to construction.

II. SEATTLE PUBLIC UTILITIES TASKS:

1. Coordinate with Shoreline on Relocation Work design drawings, including attending meetings at the request of Shoreline, reviewing design drawings and providing comments or final approval for the Final Design of Relocation Work facilities that will become part of SPU's Water System. Upon receipt of design drawings, SPU will respond with comments within 20 days (not including weekends and recognized holidays).
2. At the request of Shoreline, SPU shall provide records of the existing Water System Segment. SPU will field locate the existing Water System Segment when requested by the One Call Utility Locate Service.
3. Where water service taps have been or will be laterally relocated along the water main, and private plumbing modifications are required for the affected property due to Relocation Work prior to construction, SPU shall coordinate water service impacts only with the affected private property owner. SPU will not perform work on private property unless it is part of the Relocation Work assigned to SPU in the final Plans and Specifications and pursuant to a proper entry rights as required by Section I.10.

Appendix 2
Watermain Work – Design Cost Estimate

I. Watermain Work Design Costs

Total design costs:	\$ 54,000
Shoreline Share (0%)*	\$ 0.00
SPU Share (54%)	\$ 54,000

* Design costs were based on the lineal foot of pipe that is SPU-required relocation work.