

**PORT OF PALM BEACH DISTRICT
REQUEST FOR DISCUSSION AND
COMMISSION ACTION**

**OLD BUSINESS
ITEM H-3**

PREPARED BY: José Soler, PE Port Engineer February 14, 2018

SUBJECT: Berth 17 and Paving Project
 Consideration of AECOM Work Order Amendment #4

BACKGROUND:

The project's original substantial construction completion date is July 2017. On June 2017, the Berth 17 contractor, LM Heavy Civil Construction, Inc. (LMH) submitted a revised schedule project update with a projected new completion date of December 2017, which indicated a delay of 117 days. Amendment 2 for AECOM was approved in June to provide Construction Engineering Services through the month of December 2017.

The contractor did not meet the agreed substantial completion date of December 5, 2017, and as a result, AECOM will exceed the budget estimated in Amendment 2. An Amendment #3 for the additional Construction Engineering Services through the estimated completion date of February 2018 with a total amount of \$58,475, was presented and approved by the Board during the December 28 meeting.

After the approval of the Amendment by the Board, AECOM indicated that they discovered a large error in the budget spreadsheet for the proposed Amendment. AECOM submitted a revised proposal for the total amount of \$75,290.00 as Amendment #4 with the additional funds requested to provide services until February 16, 2018.

On February 1, 2018, Staff met with representatives of AECOM, including Diana Beauchamp Lopez and Carlos Garcia to discuss the invoice in the amount of \$75,290.00, in addition to what was already submitted.

AECOM mentioned that their work on Berth 17 consists of a full-time Inspector and full-time construction management support, which has resulted in this amount of \$75,290.00 to provide service until February 16, 2018.

In a letter dated February 6, 2018 from Diana Beauchamp Lopez, she stated the significant additional costs incurred by District due to LMH's delays should not be borne by the District or AECOM, but by the contractor. She stated that AECOM cannot absorb additional effort without approved funding and in the event the Board does not approve the requested amount of \$75,290.00, then AECOM requested that the District reconsider the approval of AECOM's services on a time and material basis through the contractor's project completion date. If the District wishes to reduce the level of construction oversight, technical support, and management, she will immediately prepare a reduced budget commensurate with the scope being considered.

Addendum to AECOM letter dated January 10, 2018 – This Work Order is without prejudice to the District's rights under the CCNA Agreement dated February 17, 2011 between AECOM and the District, and without waiver of any claims under that Agreement by District against AECOM.

The Revised Total Amount for the Construction Engineering Services for the project is \$75,290.00.

An oral presentation by AECOM representative will provided during the February 21, 2018 meeting.

ADDITIONAL INFORMATION ATTACHED: No _____ Yes X

FINANCIAL IMPACT:

The Work Order Amendment for AECOM will be funded from the FY2016/2017 Capital Budget (50%) and FDOT JPA grant funds (50%). The Total Change Order funding (FDOT JPA grant funds and POPB matching funds) is \$75,290.00.

RECOMMENDATION: The Board is respectfully requested to approve the Amendment 4 to Work Order 2015-001 with AECOM in the increased amount of \$75,290.00.

Respectfully Submitted by:



Manuel Almira, Executive Director

DATE ACTION TAKEN: _____

Approved: _____

Disapproved: _____

Deferred To: _____

Incorporated into Minutes: _____

Motion By: _____

Seconded By: _____

Unanimous: Yes _____ No _____

By: _____



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West Palm Beach, FL 33409
www.aecom.com

561 684 3375 tel
561 689 8531 fax

January 10, 2018

Jose Soler
Port of Palm Beach
One East 11th Street, Suite 600
Riviera Beach, FL 33404

Subject: Proposed Amendment No. 4 to AECOM Work Order 2015-001
Berth 17 and Paving Project Construction Inspection Services

Dear Mr. Soler:

AECOM is submitting the enclosed Amendment 4 to Work Order No. 2015-001 for the continuation of Construction Inspection Services. The Berth 17 construction contractor, LM Heavy Civil Construction, Inc. (LMH) did not meet the agreed to completion date of December 5, 2017. Amendment 2, approved in June 2017, covered AECOM Construction Inspection Services through the substantial completion date of November 3, 2017. Since LMH has not completed construction, AECOM's contractual services have been extended beyond the approved amendment and associated budget. Amendment 4 includes extended Construction Inspection Services from November 6, 2017 through February 16, 2018 in the amount of \$75,290. Please note that the end date of February 16, 2018 is an estimate based on LMH's most current schedule. Additionally, as clarification, the funds requested in this Amendment are not included under the approved amount in Amendment 3 for Engineering Services.

Should LMH's completion of the project be delayed further, an additional amendment will be necessary.

Sincerely,

Karen D. Brandon, PE

KDB/dw

Encl.

cc: Diana Lopez

**PORT OF PALM BEACH DISTRICT
CONSULTANT WORK ORDER
PREPARED BY AECOM**

AMENDMENT 4 TO WORK ORDER NO: 2015-001

JOB NAME: Berth 17 and Paving Project – Bidding and Construction Engineering Services

This AMENDMENT 4 TO WORK Order 2015-001 Is Issued By THE PORT OF PALM BEACH (CLIENT) Pursuant To The AGREEMENT UNDER CCNA FOR WORK OF A SPECIFIED NATURE RELATING TO RECONSTRUCTION OF SLIP 3 PORT OF PALM BEACH DISTRICT Between AECOM (CONSULTANT) And The Port Of Palm Beach (CLIENT), DATED February 17, 2011, Which Is Incorporated Herein By This Reference For The Below SERVICES:

BACKGROUND

The Port of Palm Beach has requested additional Construction Inspection Services for the Berth 17 and Paving Project which will address the current and future goals of the Port. The Port is looking to achieve an increased utilization of their waterfront areas, to accommodate additional vessels and implement improvements to the upland waterfront operations along the south berth.

(a) SCOPE OF WORK

CONSULTANT will perform, however is not limited to, the following services,:

1. Additional Construction Inspection Services:

See Appendix A: Scope of Services

(b) TIME OF COMPLETION

All Times of Completion are subject to exceptions for delays which are beyond the control of CONSULTANT.

The CONSULTANT will continue the construction inspection services for an additional 14.5 weeks, through February 16, 2018.

(c) ASSUMPTIONS

1. This Amendment will only authorize Construction Inspection Services to continue for an additional 14.5 weeks through February 16, 2018.

(d) COMPENSATION – See Addendum.

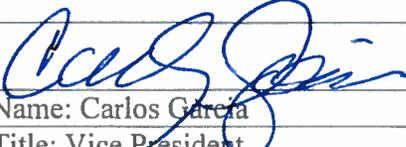
Compensation Budget for CONSULTANT is not to exceed \$75,290.

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.

The Authorized Representatives designated below are authorized to act with respect to the Work Order. Communications between the parties shall be between parties and their consultants or subcontractors shall be through the Authorized Representatives:

For the CLIENT:	For the CONSULTANT:
Name: Jose Soler, Port Engineer	Name: Karen D. Brandon, P.E., Sr. Project Manager
Address: Port of Palm Beach District, One East 11 th Street, Suite 600, Riviera Beach, Florida 33404	Address: AECOM TECHNICAL SERVICES, INC. , 2090 Palm Beach Lakes Blvd., Suite 600, West Palm Beach, FL 33409
Telephone: (561) 383-4133 / Mobile: (561) 253-4813	Telephone: (561) 684-3375 / Mobile: (561) 719-4308

This Amendment 4 to Work Order No. 2015-001 is effective this ___ of _____ 2018.

Accepted for CONSULTANT by:	Accepted for CLIENT by:
	
Name: Carlos Garcia	Name: Blair J. Ciklin
Title: Vice President	Title: Chairman

**Appendix A
Amendment 4**

**Scope of Services
for
Port of Palm Beach District
Berth 17 and Paving Project**

AECOM is pleased to provide this Amendment to Work Order No. 2015-001 for Construction Inspection Services for an additional 14.5 week duration, through February 16, 2018, for the Berth 17 and Paving project at the Port of Palm Beach.

We understand that the overall project generally consists of the following elements of work, however it is not limited to:

- Waterfront improvements to enhance:
 - Demolition, removal and disposal of existing bulkhead, seawall, fenders, bollards, pavement and drainage structures;
 - Excavation of new slip and dredging at entrance to slip; and
 - Installation of new sheet pile and scant pile bulkheads and concrete caps, new mooring dolphins and catwalks; fenders; bollards; navigation lighting.

- Landside improvements on the west and south, to include the following elements:
 - New paved access, grading and striping;
 - New concrete aprons;
 - Modifications to the water supply, sanitary sewer and drainage;
 - New lighting, shore power and electrical modifications.

AECOM will have continued overall project management and resident engineering responsibilities for monitoring and inspecting all construction activities related to the project, including all installations, and all landside improvements related to the Berth 17 and Paving Project. AECOM's role is to serve as the resident engineer, providing supervisory and construction inspection services during the project in order to ensure that the construction is completed while satisfying all requirements of the plans, specifications, permits, codes, applicable agencies and Port of Palm Beach District. AECOM will provide resident engineer services over the anticipated additional contract term of approximately 8 months, on site as required, in support of the full spectrum of categories of responsibility as stipulated in the work order.

AECOM's project team will be inclusive of experienced personnel who have been working with the Port of Palm Beach over the last 6 years. Florida-licensed professional engineer Karen Brandon, P.E., will remain as lead in the project manager role, continuing as point of contact with the Port Engineer Jose Soler. In addition, all the AECOM leads currently working on the project will remain for this phase, including John Carel, P.E., as senior structural engineer, as well as Diana Lopez, as AECOM senior executive. AECOM team partner PSA Constructors Inc. will continue to have an engineering inspection role in support of our team. In addition, other AECOM Team partners will continue to serve as inspectors in their respective fields, including civil engineering and electrical engineering subconsultants Engenuity Group, Inc. and Smith Engineering Consultants, Inc.

As a value-added element, AECOM plans to consistently check in with the Port Engineer and provide suggested staffing and/or subconsulting services before bringing additional resources on board. The AECOM project manager will have the ability to request resources on an as-needed basis.

Specific inspection related services to be performed under Amendment 4 to Work Authorization No. 2015-001 include:

- Construction activity oversight and inspection, including:

- Daily site progress record reporting, with a focus upon photo documentation; Daily inspections through February 16, 2018.
- Establishment and maintenance of retrievable library of project file records;
- Logging, tracking and seeking of timely answers related to project submittals and requests for information;
- Contractor payment verification and change order tracking and verification, including claims prevention and mitigation;
- Weekly construction progress meetings;

Addendum

This Work Order is without prejudice to the District's rights under the CCNA Agreement dated February 17, 2011 between AECOM and the District, and without waiver of any claims under that Agreement by District against AECOM. All work described in this Work Order shall be fully completed regardless of the actual number of hours required for same and the \$75,290 "not to exceed amount" is the maximum that AECOM can charge regardless of the actual number of hours expended, or the hourly rates that would apply to those hours.

		Firm	AECOM STAFF										
		Name	Lopez	Carel	Brandon	Liu	Perricelli	Rive	Boivin	Williams	Expenses		
		Summary	Mgmt	EOR	Mgmt			CEI	Cadd	Office			
		Title	Officer-in-Charge	Structural/Marine	Project Manager	Geotech	Scheduler	Inspector	Cadd	Admin			
ID	Continued Construction Services through 11/5/17 - 2/23/18	Duration Schedule (Work Weeks)	Allotted Working Hours Per Employee Per Activity Loaded Below									Total AECOM Staff (Work Hours)	Total AECOM Staff (Fee Per Activity)
1	Project Management	0										0	\$0
2	Marine Structural and Concrete, Geotechnical Engr.	0										0	\$0
3	Construction Inspection	14.5						580				580	\$75,290
4	Project Closeout Activities	0										0	\$0
	Total Hours		0	0	0	0	0	580	0	0		580	
	Total Cost for AECOM	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$75,289.80	\$0.00	\$0.00			\$75,290
5	Construction Inspection Sub PSA	\$0.00											\$0
5	Engenuity Group	\$0.00											\$0
7	Smith Engineering	\$0.00											\$0
	Total Cost for Subs	\$0.00											\$0
	Total Cost	\$0.00											\$75,290

Assumptions:

AECOM - Nov 6, 2017- Feb 16, 2018

Nov	3.5 weeks
Dec	4 weeks
Jan	5 weeks
Feb	2 weeks
Total	14.5 weeks



AECOM
2090 Palm Beach Lakes Boulevard
West Palm Beach
FL, 33409
USA
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Date
February 6, 2018

Mr. Manuel Almira
Executive Director
Port of Palm Beach District
One East 11th Street, Suite 600
Riviera Beach, FL 33404

Subject: AECOM Proposed Amendment 4 to Work Order 2015-001
Berth 17 and Paving Project – Bidding and Construction Engineering Services

Dear Mr. Almira:

Thank you for the opportunity to meet with you on Thursday, February 1, 2018, following the January 18, 2018 Port of Palm Beach District ("District") Board Meeting where the above-referenced amendment was considered, but not approved. First and foremost, AECOM emphatically reiterates that construction delays caused by the District's contractor for the Berth 17 project, LHM Heavy Civil Construction ("LMH"), are strictly the responsibility of LMH, not the District nor AECOM. The contractor is fully responsible for the creation and maintenance of the construction schedule and is solely responsible for the means, methods, techniques, sequences and procedures for construction. AECOM has been a loyal and committed partner to the District, and has performed its contractual obligations since our contract's inception. AECOM's role providing resident engineering and construction inspection services is directly tied to the contractor's completion date, which AECOM does not control.

The District approved LMH contractual milestone dates are as follows: Substantial Completion date of July 15, 2017 and Final Completion date of August 14, 2017. On June 15, 2017, the District approved AECOM Amendment 2. This Amendment was required as a result of LMH delaying its estimated completion date to December 5, 2017. Accordingly, the approved AECOM's Work Order extension and budget in Amendment 2 also expired on December 5, 2017. In that budget, AECOM extended full time on-site inspection services through August 31, 2017 to coincide with LMH's schedule of major construction activities, and estimated that the on-site presence would be reduced to 16 hours per week beyond that date through the LMH estimated substantial completion date of November 3, 2017.

On August 11, 2017, AECOM informed the District via letter that effective September 4, 2017 AECOM would be replacing the construction inspector with a full time project administrator providing not only inspection services, but also on-site construction management services. This increased level of oversight and field experience was discussed and agreed upon with the Port Engineer based on the contractor's continuous schedule slippage and lack of a recovery schedule. In partnership with the District, AECOM committed to the Port Engineer that it would cover the additional costs of field oversight (24 additional hours per week at a cost of approximately \$3,200 per week for an estimated 9 weeks) through the LMH estimated substantial completion date of November 3, 2017. However, we discussed with the Port Engineer that in the event that the contractor did not finish by their estimated completion date of December 5th, AECOM would seek funding to extend its current services beyond the agreed upon date.

Additionally, in order to conduct a thorough review of the LMH Time Impact Analysis, AECOM engaged the services of technical specialists, senior construction and dispute resolution managers at no additional cost to the District. It is not AECOM's intent to recover any of these costs. AECOM is carrying out its commitment to support the District in its effort to push the contractor to complete its contractual obligations and turn the berth back to the District as quickly as possible. LMH started falling behind schedule early in the project. The negative variances were documented as early as their first schedule update two months after receiving Notice to Proceed. On August 8, 2017, AECOM submitted to the District its findings and recommendations in response to the LMH Time Impact Analysis where LMH claimed 127 calendar days of excusable delay, including 113 calendar days of compensable delay. The AECOM analysis demonstrated that LMH's claim of time impacts and effort to divert their responsibility on other parties including AECOM and the District were inaccurate and unsubstantiated. AECOM's analysis concluded that LMH was only entitled to three (3) additional excusable and compensable calendar days.

On September 25, 2017, LMH notified the District that the District's indication that LMH needed to complete the in-water work by November 15, 2017 (commencement of manatee season) as established by the Florida Department of Environmental Protection ("FDEP") permit was considered by LMH to be a directive for acceleration and LMH would be seeking compensation. LMH's position was incorrect as this was an LMH permit obligation and not a District directive for acceleration. LMH was aware of this permit requirement prior to bidding this project and preparing its construction schedule. In fact, LMH did not complete its in-water work by the permit date, and only through collaboration from AECOM in contacting FDEP on its behalf, was LMH granted not one, but two permit extensions to complete the in-water work. This is just one example of poor planning by LMH resulting in LMH's construction being pushed into the manatee season in violation of its permit conditions. Additionally, LMH indicated in a project meeting that the dolphin piles were ready to be shipped on June 5, 2017, the piles were not actually delivered until September 26, 2017 and the pile driving activity did not commence until October 31, 2017. LMH's actions placed this activity on the critical path, just 15 calendar days prior to the commencement of manatee season, and much later than the contract Final Completion Date of August 14, 2017. AECOM is not responsible for the delay in shipping the piles or the delay by LMH to drive the piles, which could have been performed months before the start of the manatee season.

A statement was made during our meeting regarding "re-design" that had to be done by AECOM for the installation of the dolphin piles, an activity that now appears to be on the contractor's critical path. It was clarified during our meeting that the decision to substitute the type of piles from pre-stressed concrete, as originally specified in the AECOM plans and specifications, to steel piles was made solely by LMH as a value engineering method. While the District agreed with the concept, it did not want a third party engineering firm representing LMH to get involved, so the District directed AECOM to re-design the plans to accommodate LMH's construction means and methods. In order to expedite the LMH requested substitution and collaborate with the District on this request, AECOM agreed to perform the design and Amendment 1 to the AECOM Work Order was approved by the District on April 20, 2017. AECOM then performed the design for the pile substitution. However, it is important to state that this substitution was not required to complete the project and was certainly not a result of an incorrect design, and the original design could have been constructed as designed by AECOM.

Additionally, AECOM's completion of a substitution design did not provide relief to LMH of their responsibilities to achieve pile capacity under its contract. The acceptance criteria of the piles per the contract was to achieve the pile capacity, not drive the piles to a pre-defined "minimum" depth as alleged by LMH. As such, when LMH did not achieve the established pile capacities, it was solely its responsibility to determine the course of remediation, not AECOM's or the District's. In a collaborative meeting between LMH, the District and AECOM, several alternatives were discussed including driving the piles deeper as required by its contract and supplementing the design by adding piles to achieve capacity. LMH opted to add piles, and for the same reasons stated in the pile substitution explained above, AECOM received direction from the District to complete the alternative design. To expedite completion of the project, AECOM again agreed to complete this alternative design. In order for AECOM to accurately perform the requested analysis, it required that LMH submit the as-built drawings, which also is a requirement of the LMH contract. LMH did not make the official submission until Monday, January 29, 2017. AECOM provided a sketch depicting the addition of piles within five (5) business days of receipt of the requested information.

Based on its contract with LMH, the District is entitled at its discretion to withhold Liquidated Damages following the missed, approved Substantial Completion date of July 15, 2017 and Final Completion Date of August 14, 2017. The contract defines liquidated damages as an estimate of delay damages likely to be sustained by the District. As has been expressed previously, every schedule update that LMH submits is different from the previous one. Our project representative is on site at all times, and his daily field reports continue to demonstrate that the contractor is not following its own two-week look ahead schedule. Just yesterday, LMH updated its project schedule extending its estimated completion date to March 23, 2018. This date is a full 221 calendar days later than the District approved Final Completion Date of August 14, 2017.

AECOM values its partnership with the District and is working diligently in collaboration with the District to protect its interests and see this project to completion. However, the significant additional costs incurred by District due to LMH's delays should not be borne by the District or AECOM, but by the contractor. Understandably, AECOM cannot absorb additional effort without approved funding and it is very respectfully requesting that the District reconsider the approval of AECOM's services on a time and material basis through the contractor's project completion date. If the District wishes to reduce the level of construction oversight, technical support, and management, we will immediately prepare a reduced budget commensurate with the scope being considered.

Sincerely,



Diana Beauchamp López, P.E.
Vice President

cc: Jose Sóler (Port Engineer)
Carlos García (AECOM)