

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Authorizing the City Manager to File a Complaint to Recover Damages from Gary Merlino Construction Company, Inc. and SCI Infrastructure for Defective Right-of-Way Poles Installed with the North City Right-of-Way Project and the First Mile of the Aurora Project
DEPARTMENT:	Public Works, City Attorney
PRESENTED BY:	Ian Sievers, City Attorney Kirk McKinley, Public Works
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

In May, 2009, the City began noticing paint adhesion failure and oxidation on light, signal and pedestrian poles installed as part of the North City Project completed on July 31, 2006. In July, 2010, the City noticed similar problems with the light, signal and pedestrian poles installed as part of the Aurora Avenue North Multimodal Corridor Project (N 145th – N 165th streets) (“Aurora Project”), completed on May 1, 2007.

Since discovery of the problems, the City has attempted to work with NW Lighting Group, the supplier of the poles in both projects, to identify and remedy the problem. The City has also notified Gary Merlino Construction Company, Inc., the general contractor in the Aurora Project and SCI Infrastructure, the general contractor on the North City Project. To date, the City’s efforts have been unsuccessful. At this time, eighty-two percent (82%) of the light poles in the North City project are affected.

Because efforts to resolve the problem have been unsuccessful and there is a six year statute of limitations on breach of contract claims, the City Attorney’s Office recommends filing a breach of contract claim against SCI Infrastructure, the general contractor on the North City Project and Gary Merlino Construction Company, Inc., the general contractor on the Aurora Project by the end of April, 2012. Attached to this report are drafts of the complaints that outline the City’s claims. Attachment A is a draft of the complaint against Gary Merlino Construction Company and Attachment B is a draft of the complaint against SCI Infrastructure.

Poles that were included as part of the 165th to 185th Aurora Project were painted by a different painter and fabricator. Half of the second mile poles were switched over to a more expensive process (powder coating). At this time, we have no reason to suspect paint failure is expected but again, we do not know the root cause for the problems in North City and on the first mile of Aurora.

RESOURCE/FINANCIAL IMPACT:

The financial impact of filing breach of contract claims against the two general contractors will include filing fees of approximately \$230 per claim. The financial impact of inaction, is much greater. Specifically, the City estimates the cost to restore all of the damaged poles to be \$881,000 in North City and \$249,000 on Aurora. However, this only includes the poles currently damaged. If the paint continues to fail on other poles, the cost will rise. The cost to replace all of the poles is estimated to be \$1,028,000 for North City and \$1,976,000. These estimates include costs for traffic control and temporary signal systems.

RECOMMENDATION

Staff recommends that Council approve filing lawsuits against Gary Merlino Construction Company, Inc. and SCI Infrastructure for defects in right of way poles installed with the North City right-of-way project and the first mile of the Aurora Project.

Approved By: City Manager *JU* City Attorney *IS*

ATTACHMENTS

- A. Breach of Contract Complaint (Merlino)
- B. Breach of Contract Complaint (SCI Infrastructure)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

<p>CITY OF SHORELINE, a municipal corporation, Plaintiff, v. Gary Merlino Construction Co., Inc, a Washington corporation, Defendants.</p>	<p>No. COMPLAINT FOR BREACH OF CONTRACT</p>
---	--

COMES NOW Plaintiff, City of Shoreline, and states as follows:

I. PARTIES

1.1 Plaintiff City of Shoreline (“City”) is a Washington municipal corporation with its principal place of business at 17500 Midvale Avenue North, Shoreline, King County, Washington 98133, organized as a noncharter code city under RCW 35A 02.010.

1.2 Defendant Gary Merlino Construction Company, Incorporated (“Merlino”) is a Washington State for-profit corporation, registered to conduct business in Washington State, with its principal place of business at 9125 10th Avenue South, Seattle, WA, 98108.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

II. JURISDICTION AND VENUE

2.1 Jurisdiction is properly in the Superior Court pursuant to RCW 2.08.010.

2.2 Venue is properly vested in this Court pursuant to RCW 4.12.025, because the agreement entered into with the defendant corporation was made in King County, Washington and the defendant has an office for the transaction of business in King County.

III. STATEMENT OF FACTS

3.1 In June, 2005, defendant Merlino entered into a contract with the City to provide construction services for the Aurora Avenue North Multimodal Corridor Project (N 145th – N 165th streets) and Interurban Trail Pedestrian and Bicycle Crossing Project (“Project”), Contract No. 2958, located within the City of Shoreline, King County, Washington (“Contract”).

3.2 Merlino agreed to complete the Project in accordance with the Contract Documents, including Addenda 1 through 8, and to fully perform all covenants therein.

3.3 The project required installation of fifteen (15) signal poles and sixty-six (66) light poles.

3.4 Each pole was to be factory finish painted with Tnemec products.

3.5 Tnemec paint was specified by the City as a coating based upon its high resistance to corrosion, abrasion, wet conditions and exterior weathering.

3.6 Merlino agreed to perform all work under the Contract in accordance with standard specifications found in the 2004 Standard Specifications for Road, Bridge and Municipal

1
2 Constructions (Standard Specifications), and Amendments to the Standard Specifications
3 and Special Provisions included in the Contract Documents.

4 3.7 Pursuant to the Special Provisions, Merlino agreed to:

5 3.7.1 Complete workmanship in accordance with the latest accepted standards of the
6 industry as determined by the Engineer.

7 3.7.2 Provide all labor and materials for surface cleaning, preparation, and application
8 of exterior surface coatings, including preparation and painting of signal poles,
9 arms, bases, and luminaire housing; and luminaire poles, arms, bases and
10 luminaire housings.

11 3.7.3 Hot-dip galvanize all luminaire and signal poles, including the base plate and
12 sub assemblies.

13 3.7.4 Not alter the Tnemec painting materials except for reducing in accordance with
14 the manufacturer's recommendations.

15 3.7.5 Follow the paint schedule of: (1) spot primer of Tnemec series 90-97, Tneme-
16 Zinc; (2) first coat of Tnemec series 161 Tneme-Fascure; (3) second coat of
17 Tnemec Series 73 Endura-Shield.
18

19 3.7.6 Prepare the surfaces to receive the paint finish by cleaning all exterior surfaces
20 and to abrade galvanized surfaces to remove carbonated salts.
21

22 3.7.7 Prepare metal surfaces with solvent cleaning followed by SP-3 Power Tool
23 Cleaning.
24

25 3.7.8 Apply primer as quickly as possible following cleaning.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3.7.9 Not apply coatings to wet or damp surfaces, or when relative humidity is outside the ranges required by product manufacturer or when rain is imminent.

3.7.10 Maintain the temperature range of 50 degrees Fahrenheit and 90 degrees Fahrenheit at least 24 hours prior to and 48 hours following paint application.

3.7.11 Apply the exterior coating materials evenly in accordance with manufacturer's directions and printed specifications.

3.8 Merlino agreed to examine surfaces scheduled to be finished before commencement of work and to report any condition that may potentially affect proper application.

3.9 Merlino also agreed to verify that the surfaces were ready to receive the work as the product manufacturer instructed and to inspect the work upon initial completion and correct any non-complying work.

3.10 Merlino agreed that changeovers of existing and temporary traffic signals must take place after 9:30AM and be completed by 3:00PM the same day. The changeover requires a uniformed police officer to direct traffic and traffic control.

3.11 Merlino completed the work on the Project on May 1, 2007.

3.12 The City has fully performed its contract obligations to Merlino relative to the project.

3.13 In July, 2010, the City discovered peeling paint and white oxidation on the luminaire and signal poles.

3.14 The City notified Merlino on October 18, 2011 of the peeling paint and white oxidation on the poles.

1 3.15 Prior to notifying Merlino, the City contacted the manufacturer of the poles, NW
2 Lighting Group, attempting to identify and remedy the problem.
3

4 3.16 To date, NW Lighting Group has not remedied the peeling paint or oxidation.

5 3.17 To date, Merlino has not remedied the peeling paint and oxidation of the poles.

6 3.18 To date, in the Project, five luminaire poles and six signal poles are experiencing
7 paint failure and oxidation.

8 3.19 The total cost to replace all sixty-six light poles, sixty-six light pole arms, fifteen
9 signal poles, fifteen signal pole arms, fifteen signal pole light arms and provide traffic
10 control and temporary signal systems is \$2,048,000.00, broken down as follows:
11

12 3.19.1 \$15,000.00 per luminaire pole, for a total of \$990,000.00.

13 3.19.2 \$3,000.00 per light pole arm, for a total of \$198,000.00.

14 3.19.3 \$30,000.00 per signal pole, for a total of \$450,000.00.

15 3.19.4 \$15,000.00 per signal pole arm, for a total of \$225,000.00.

16 3.19.5 \$3,000.00 per signal pole light arm, for a total of \$45,000.00.

17 3.19.6 The cost for traffic control is \$20,000.00 associated with the above pole
18 replacements.
19

20 3.19.7 The cost for a temporary signal system is \$30,000.00. It is estimated that four
21 temporary signal systems will be necessary at a cost of \$120,000.00.

22 **IV. CAUSE OF ACTION – BREACH OF CONTRACT**

23 4.1 Plaintiff incorporates by reference the allegations set forth above as if fully set forth
24 herein.
25

1 4.2 The actions and omissions of defendant Merlino constitute a material breach of its
2 contract with the City.

3
4 4.3 As a proximate result of Merlino's breach of contract, the City has been damaged in
5 an amount not less than \$2,048,000.00.

6 **V. PRAYER FOR RELIEF**

7 The City prays for relief against Defendant Gary Merlino Construction Co., Inc. as follows:

- 8 1. For judgment against Merlino for the cost to replace the poles and provide for traffic
9 control and a temporary signal system in the amount of \$2,048,000.00.
10
11 2. Or, in the alternative, for judgment against Merlino for specific performance of the
12 contract, providing replacement signal and luminaire poles, arms and bases which satisfy the
13 terms of the contract, including providing for traffic control and temporary signal systems.
14 3. For such other relief as the the Court deems just and equitable.

15 DATED this ___ day of April, 2012.

16 CITY OF SHORELINE

17
18 _____
19 Christina M. Schuck, WSBA # 44436
20 Assistant City Attorney
21 Attorney for Plaintiff
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

CITY OF SHORELINE, a municipal
corporation,

Plaintiff,

v.
SCI INFRASTRUCTURE, a Washington
Limited Liability Corporation,

Defendants.

No.

COMPLAINT FOR BREACH OF
CONTRACT

COMES NOW Plaintiff, City of Shoreline, and states as follows:

I. PARTIES

1.1 Plaintiff City of Shoreline (“City”) is a Washington municipal corporation with its principal place of business at 17500 Midvale Avenue North, Shoreline, King County, Washington 98133, organized as a noncharter code city under RCW 35A 02.010.

1.2 Defendant SCI Infrastructure, LLC (“SCI”) is a Washington State limited liability corporation, registered to conduct business in Washington State, with its principal place of business at 2825 South 154th Street, Seattle, WA, 98188.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

II. JURISDICTION AND VENUE

2.1 Jurisdiction is properly in the Superior Court pursuant to RCW 2.08.010.

2.2 Venue is properly vested in this Court pursuant to RCW 4.12.025, because the agreement entered into with the defendant corporation was made in King County, Washington and the defendant has an office for the transaction of business in King County.

III. STATEMENT OF FACTS

3.1 In April, 2005, defendant SCI entered into a contract with the City to provide construction services for the North City Project, Contract No. 2347, located within the City of Shoreline, King County, Washington ("Contract").

3.2 SCI agreed to complete the Project in accordance with the Contract Documents, including Addenda 1 through 1, and to fully perform all covenants therein.

3.3 The project required installation of eleven (11) signal poles, with a total of twelve (12) signal pole arms and ten (10) light arms; nineteen (19) pedestrian/sign poles; and fifteen (15) street light poles with fifteen (15) light pole arms.

3.4 Each pole was to be factory finish painted with Tnemec products.

3.5 Tnemec paint was specified by the City as a coating based upon its high resistance to corrosion, abrasion, wet conditions and exterior weathering.

3.6 SCI agreed to perform all work under the Contract in accordance with standard specifications found in the 2004 Standard Specifications for Road, Bridge and Municipal Constructions (Standard Specifications), and Amendments to the Standard Specifications and Special Provisions included in the Contract Documents.

1 3.7 Pursuant to the Special Provisions, SCI agreed to:

2
3 3.7.1 Complete workmanship in accordance with the latest accepted standards of the
4 industry as determined by the Engineer.

5 3.7.2 Hot-dip galvanize all light and signal poles, including the base plate and sub
6 assemblies. (9-29.6(1)A)

7 3.7.3 Prepare the surface for painting by shop sandblasting using SSPC-SP6
8 Commercial Blast, using non-metallic abrasive. (6-07.2)

9 3.7.4 Ensure surfaces are clean, dry and free of oil, grease and other contaminants. (6-
10 07.3)

11 3.7.5 Apply entire finish system in the shop. (6-07.3)

12 3.7.6 Follow the paint schedule of: (1) spot primer of Tnemec series 90-97, Tneme-
13 Zinc; (2) intermediate coat of Tnemec series 27 Typoxy; (3) finish coat of
14 Tnemec Series 73 Endura-Shield. (6-07.1)

15
16 3.8 SCI completed the work on the Project on July 3, 2006.

17 3.9 The City has fully performed its contract obligations to SCI relative to the Project.

18
19 3.10 In May, 2009, the City discovered peeling paint and white oxidation on signal
20 poles, pedestrian/sign poles and street light poles.

21 3.11 The City notified SCI on September 23, 2011 of the peeling paint and white
22 oxidation on the poles.

23 3.12 Prior to notifying SCI, the City contacted the manufacturer of the poles, NW
24 Lighting Group, attempting to identify and remedy the problem.
25

1 3.13 To date, NW Lighting Group has not remedied the peeling paint or oxidation.

2 3.14 To date, SCI has not remedied the peeling paint and oxidation of the poles.

3
4 3.15 To date, in the Project, twelve of sixteen street light poles, fifteen of twenty-one
5 pedestrian/sign poles and all eleven signal poles are experiencing paint failure and
6 oxidation.

7 3.16 The total cost to replace all sixteen light poles, sixteen light pole arms, eleven signal
8 poles, twelve signal pole arms, ten signal pole light arms, nineteen pedestrian poles and to
9 provide traffic control and temporary signal systems is \$1,010,000.00, broken down as
10 follows:
11

12 3.16.1 \$15,000.00 per light pole, for a total of \$225,000.00.

13 3.16.2 \$3,000.00 per light pole arm, for a total of \$45,000.00.

14 3.16.3 \$30,000.00 per signal pole, for a total of \$330,000.00.

15 3.16.4 \$15,000.00 per signal pole arm, for a total of \$180,000.00.

16 3.16.5 \$3,000.00 per signal pole light arm, for a total of \$30,000.00.

17 3.16.6 \$5,000.00 per pedestrian pole, for a total of \$95,000.00

18 3.16.7 The cost for traffic control is \$15,000.00 associated with the above pole
19 replacements.
20

21 3.16.8 The cost for per temporary signal system is \$30,000.00. It is estimated that
22 three temporary signal systems will be necessary at a cost of \$90,000.00.

23 ///
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IV. CAUSE OF ACTION – BREACH OF CONTRACT

4.1 Plaintiff incorporates by reference the allegations set forth above as if fully set forth herein.

4.2 The actions and omissions of defendant SCI constitute a material breach of its contract with the City.

4.3 As a proximate result of SCI’s breach of contract, the City has been damaged in an amount not less than \$1,010,000.00.

V. PRAYER FOR RELIEF

The City prays for relief against Defendant SCI Infrastructure, LLC as follows:

1. For judgment against SCI for the cost to replace the poles and provide for traffic control and a temporary signal system in the amount of \$1,010,000.00.

2. Or, in the alternative, for judgment against SCI for specific performance of the Contract, providing replacement signal, pedestrian and light poles, arms and bases which satisfy the terms of the Contract, including providing for traffic control and temporary signal systems.

3. For reasonable attorney’s fees, claim investigation expenses, consulting engineering expense, deposition expenses, exhibits, and witness fees against SCI under the terms of the Contract.

4. For such other relief as the the Court deems just and equitable.

DATED this ___ day of April, 2012.

CITY OF SHORELINE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Christina M. Schuck, WSBA # 44436
Assistant City Attorney
Attorney for Plaintiff