

ORIGINAL

RESOLUTION 2011 - 04

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES WITH
HUIBREGTSE, LOUMAN ASSOCIATES (HLA)
(Downtown Revitalization Action Plan)**

WHEREAS, the City of Sunnyside has previously solicited proposals from qualified persons and firms for consulting and engineering services to prepare the 2011 Downtown Revitalization Action Plan; and

WHEREAS, the City Council finds and determines that HLA is the most qualified professional engineering firm to provide such services; and

WHEREAS, the City Council finds and determines that an Agreement for Professional Services and Exhibit "A" - Scope of Services titled Downtown Revitalization Action Plan, should be approved; and

WHEREAS, the City Council finds and determines that such approval is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

SECTION 1. That the agreement for professional engineering, surveying and management services for the Downtown Revitalization Action Plan with HLA, which agreement and scope of work is attached hereto as Exhibit "A" and titled Agreement for Professional Services and incorporated herein by this reference, is hereby approved; and the City Manager is hereby authorized to execute and administer such agreement for and on behalf of the City of Sunnyside.

SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 22nd day of August, 2011.



JAMES A. RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



MENKE JACKSON BEYER EHLIS & HARPER, LLP
Attorneys for the City of Sunnyside

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT entered into this _____ day of August, 2011, by the CITY OF SUNNYSIDE, 818 E. Edison Avenue, Sunnyside, WA 98944, hereinafter called the CITY, and HUIBREGTSE, LOUMAN ASSOCIATES, INC., 801 North 39th Avenue, Yakima, WA 98902, hereinafter called the CONSULTANT,

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

1. **ENGAGEMENT OF CONSULTANT:** The CITY, acting pursuant to its vested authority, and in accordance with the City Council's approval on _____, 2011, does hereby hire the CONSULTANT and the CONSULTANT agrees to perform professional engineering, surveying, and management services in connection with the **Downtown Revitalization Action Plan** (PROJECT). City Manager Mark Gervasi, or designated representative, will act as the liaison for the CITY and Mr. Jeffrey T. Louman, PE, will act as liaison for the CONSULTANT for administration of this Agreement. This Agreement for Professional services can only be amended or revised by the written agreement of both parties.

The relationship of the CONSULTANT to the CITY shall be that of an independent CONSULTANT rendering professional services. The CONSULTANT shall have no authority to execute contracts or to make commitments on behalf of the CITY and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the CITY and the CONSULTANT.

2. **CHARACTER AND EXTENT OF SERVICES:** The CONSULTANT shall perform certain professional engineering, surveying, and management services for the PROJECT in accordance with EXHIBIT A – SCOPE OF SERVICES, attached hereto.
3. **ITEMS TO BE FURNISHED AND RESPONSIBILITY OF CITY:** The CITY will provide or perform the following:
 - a. Provide full information as to CITY requirements of the PROJECT.
 - b. Assist the CONSULTANT by placing at his disposal all available information pertinent to the site of the PROJECT including previous reports, drawings, plats, surveys, utility records, and any other data relative to design and construction of the PROJECT.
 - c. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT.
 - d. Advertise for hearings and proposals for bidders, open the proposals at the appointed time and place, and pay for all costs incident thereto.
 - e. Obtain approval of all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from such other individuals or bodies as may be necessary for completion of the PROJECT.
 - f. Pay the costs of publishing environmental review documents.

EXHIBIT "A"

4. **COMPLETION TIMES:** The services called for under the various phases of EXHIBIT A - **SCOPE OF SERVICES** of this Agreement shall be completed as follows:

Phase A: Preliminary Investigation and Planning Process

Work to begin upon notification to proceed issued by the CITY and to be completed within one hundred twenty (120) calendar days.

Phase B: PLAN Preparation

Work to begin upon completion of Phase A and to be completed within sixty (60) calendar days.

Phase C: PLAN Adoption

Work to begin upon completion of Phase B and to be completed as directed by the CITY.

5. **PROFESSIONAL FEES:** For the services furnished by the CONSULTANT as described under Section 2 of this Agreement, the CITY agrees to pay the CONSULTANT the fees as set forth herein:

All work shall be performed on a time spent basis at the normal hourly billing rates as shown in EXHIBIT B - SCHEDULE OF HOURLY RATES plus reimbursement for direct non-salary expenses such as laboratory testing, reproduction expenses, out of town travel costs, long distance telephone calls, and outside consultants. Outside subconsultant's billings shall be marked up by a factor of 1.07 times the subconsultant billing. The maximum amount payable by the CITY to the CONSULTANT under this Agreement shall not exceed \$50,000.00. This maximum amount may be revised only by written agreement of both parties.

6. **PAYMENT:** Monthly payments, payable according to Section 8 of this Agreement, based on the documented amount due.
7. **CITY PAYMENT SCHEDULE:** The CITY will process for payment all statements received by the 10th day of each month for work done from the 1st day of the prior month. All statements not paid within 30 days of the date of billing shall be subject to service charges of one and one-quarter percent (1.25%) per month.
8. **FACILITIES TO BE FURNISHED BY THE CONSULTANT:** The CONSULTANT shall furnish and maintain a central office, drafting space, and equipment suitable and adequate for the prosecution of the work that is normal to the functioning of an established consulting engineering and surveying practice.
9. **TERMINATION:** The CITY or CONSULTANT may terminate this Agreement by giving thirty (30) days written notice to the other party. In such event, the CITY shall forthwith pay the CONSULTANT in full for all work previously authorized and performed prior to notice of termination. In the event of termination, the CONSULTANT agrees to cooperate reasonably with any consulting engineer thereafter retained by the CITY in making available information developed as the result of work previously performed by the CONSULTANT. If no notice of termination is given, relationships and obligations

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created by this Agreement, unless otherwise expressly provided, shall be terminated upon completion of all applicable requirements of the Agreement.

10. **ARBITRATION**: All claims, disputes, and other matters in question arising out of, or related to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Rules of the American Arbitration Association. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration shall be filed in writing with the other party of this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after institution of legal or equitable proceedings based upon such claim, dispute, or other matter in question would be barred by applicable statute of limitations.

The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction.

In the event of a claim, jurisdiction and venue shall be in Yakima County, Washington.

11. **INDEMNIFICATION**: The CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by the negligent act, omission, or failure of the CONSULTANT, its officers, agents and employees, in performing the work required by this Agreement.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, comprehensive general liability insurance written on an occurrence basis with a minimum coverage of \$1,000,000 per occurrence and \$1,000,000 aggregate for personal injury, \$1,000,000 per occurrence/aggregate for property damage and \$1,000,000 professional liability insurance.

In the event the CITY requires contractors or subcontractors working on CITY projects to acquire and provide proof of insurance covering public liability, death, and property damage naming the CITY as an insured, the CITY shall require said contractors or subcontractors to name the CONSULTANT as an additional insured.

12. **ASSIGNMENT**: The CONSULTANT shall not assign this Agreement, or any of the work or services covered by this Agreement, without the express written consent of the CITY.
13. **STANDARD FOR PERFORMANCE**: The CONSULTANT shall perform its services in accordance with generally accepted engineering and consultant standards and shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this Agreement.
14. **OPINIONS OF COST**: The CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or other competitive bidding or market conditions, and its opinions of probable project or construction costs (Engineer's Estimates) are to be made on the basis of its experience and qualifications and represents its judgment as an experienced and qualified Professional Engineer, familiar with the construction industry. However,

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the CONSULTANT cannot and does not guarantee that proposals, bids, or actual project or construction costs will not vary from the opinions of probable costs prepared by it.

15. **CONSTRUCTION AND SAFETY:** The CONSULTANT shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractors or the safety precautions and programs incidental to work of contractors. It is the intent that the construction contractors will be held responsible for means and methods of construction and all safety issues.
16. **SUBMITTAL REVIEW:** Review of proposed contractor substitutions of materials and equipment by CONSULTANT is only for general conformance with the design concept of the PROJECT and general compliance with the information given in the Contract Documents. The review does not affect the contractor's responsibility to perform all contract requirements.
17. **OWNERSHIP AND REUSE OF DOCUMENTS:** The originals of all documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement shall remain the property of the CITY and are instruments of service in respect of the PROJECT. The CONSULTANT shall provide the CITY with reproducible copies of all documents, drawings, specifications, and other work products that shall be the property of the CITY. Such documents, drawings, and specifications are not intended nor represented by the CONSULTANT to be suitable for reuse by the CITY or others on extensions of the services provided for the intended project or on any other project. Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the CONSULTANT, and the CITY shall indemnify and hold harmless the CONSULTANT from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The above provisions also apply to electronic media files. The CONSULTANT shall provide the CITY with "ASCII" and/or "AutoCAD drawing (dwg)" files of work performed for and paid for by the CITY at the request of the CITY, with the following provisions regarding reuse:
 - a. The documents are protected by the rules and regulations of U.S. Copyright Laws.
 - b. The use or reuse of original or altered electronic files by the CITY or others the CITY has released these files to will be at the CITY's own risk and liability.
 - c. The CONSULTANT shall be indemnified and held harmless by the CITY to the fullest extent of the law from any and all claims, suit, liability, demands, or costs arising out of the information contained on the files.
 - d. The CONSULTANT cannot guarantee the accuracy of the electronic information and, therefore, disclaims any and all responsibility for any results obtained as a result of their use.
18. **CITY-PROVIDED INFORMATION:** CONSULTANT is entitled to rely on all information furnished or to be furnished by CITY. CITY agrees to defend and indemnify CONSULTANT, its officers, agents, and employees from any and all claims of any kind arising out of or relating to any claims caused by an error or omissions in information provided by the CITY which were the cause of the claim for damages and provided,

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further, that the CONSULTANT's reliance on such information was reasonable under the circumstances.

19. **THIRD-PARTY BENEFICIARIES:** It is recognized that the services performed by CONSULTANT are for the benefit of the CITY and no other party. There are no third-party beneficiaries to this Agreement.

20. **EXECUTIVE ORDER 11246 CLAUSE**
 - a. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, sex, color, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the CITY setting forth the provisions of this nondiscrimination clause.
 - b. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
 - c. The CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies and raw materials.
 - d. The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - e. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the CITY, and the U.S. Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - f. In the event of the CONSULTANT's noncompliance with the noncompliance provision clauses of this Agreement or with any such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 25, 1965, or as otherwise provided by law.
 - g. The CONSULTANT will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each

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subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the CITY, the CONSULTANT may request the United States to enter into such litigation to protect the interest of the United States.

21. **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 CLAUSE:** Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. This shall include compliance with all applicable provisions of the Regulations of the U.S. Department of Commerce (Part 8 of Subtitle 15 of the Code of Federal Regulations) issued pursuant to the Civil Rights Act of 1964.

22. **ACCESS TO RECORDS CLAUSE:** The CITY and other authorized representatives of the state and federal governments shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to the contract for the purposes of making audits, examination, excerpt, and transcriptions.

All such records and all other records pertinent to this Agreement and work undertaken under this Agreement shall be retained by the CONSULTANT for a period of six years after the completion of the CITY's project, unless a longer period is required to resolve audit findings or litigation. In such cases, the CITY shall request a longer period for record retention.

23. **INTEREST OF MEMBERS OF A CITY:** No member of the governing body of the CITY and no other officer, employee, or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the CONSULTANT shall take appropriate steps to assure compliance.

24. **INTEREST OF OTHER PUBLIC OFFICIALS:** No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Agreement; and the CONSULTANT shall take appropriate steps to assure compliance.

25. **INTEREST OF CONSULTANT AND EMPLOYEES:** The CONSULTANT covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed.

EXHIBIT "A"

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF SUNNYSIDE

Mark Gervasi, City Manager

ATTEST:

_____, City Clerk
(SEAL)

HUIBREGTSE, LOUMAN ASSOCIATES, INC.

Jeffrey T. Louman, President

EXHIBIT "A"

SCOPE OF SERVICES

Downtown Revitalization Action Plan

PROJECT DESCRIPTION:

The City has selected a comprehensive approach to planning for the Downtown Central Business District (CBD) that provides direction for both public and private investment. The City will engage the downtown property and business owners as well as the community at large in planning for the future of the Sunnyside downtown area. An outcome of this approach is an improved appearance for the downtown, with streetscape improvements as a backdrop for future public and private improvements.

A Downtown Revitalization Action Plan (PLAN) will be developed to identify streetscape and landscape improvements while considering area parking needs and traffic flow, and addressing public infrastructure upgrades, e.g. potable water, sanitary sewer, street lighting, etc. The PLAN will also specify width of sidewalks which address pedestrian accessibilities, street tree locations, streetscape amenities, landscape elements and illumination fixtures.

SCOPE OF SERVICES:

Phase A: Preliminary Investigation and Planning Process

1. MEETING 1: (half day)

Attend a kickoff meeting with City staff to review the planning process and timeline. Visit the project area. Photo document the existing conditions. Discuss the selection of the Steering Committee Members. Conduct a "visioning session" with the City Council and staff to discuss the desired outcome(s) of the planning process.

2. MEETING 2: (full day)

Meet with the steering committee consisting of a person from each downtown block, as a "block captain," and City Council member(s). Review the role of the committee, planning process and project timeline. Review existing plans and documents focused on the downtown. Present the findings from the city council "visioning session."

Conduct a "walk and talk" site tour of the downtown area with the steering committee and any other interested parties. Establish the project goals and develop a list of issues and opportunities "topics." Break into small groups to discuss the topics and brainstorm ideas.

Convene as one large group to share results of the breakout groups. Confirm the project goals and topics for developing concept design options.

3. MEETING 3: (full day)

Identify cities with desirable downtowns, develop a tour schedule, and conduct site visits with the steering committee and any other interested parties. If a tour is not feasible, present street transformation examples from other cities during meeting 2.

EXHIBIT "A"

4. Conduct an inventory of parking spaces and analyze traffic flow in the downtown during September while weather conditions and daylight hours are favorable.
5. MEETING 4: (2 hours during lunch)
Review previous plans and information gathered to date and the comments from the downtown tours of other communities, and meet with downtown business and property owners to inform them of the project and seek their input. Identify issues and opportunities "topics."
6. MEETING 5: (half day)
Meet with the steering committee. Summarize the results from the preceding meetings. Present a downtown concept plan that illustrates a hierarchy of street types, parking and traffic flow, gateway opportunities and potential event locations. Present up to three concepts that include geometry, urban design, site furnishings, lighting and landscape options. Obtain steering committee feedback on the concepts. Facilitate a discussion to arrive at a preferred concept.
7. MEETING 6 : (Evening meeting)
Conduct a public forum with the community at-large hosted by the steering committee to obtain feedback on the preferred concept.

Phase B: PLAN Preparation

Develop a draft PLAN based on the preliminary investigation and planning process that will include the following:

1. An inventory of existing parking spaces in the downtown.
2. An analysis of existing traffic flow in the downtown.
3. An inventory of existing utilities in the downtown and their condition.
4. An analysis of the condition of existing downtown streets and sidewalks.
5. A summary of comments from downtown business owners, the steering committee, City Staff, City Council, Public Forum and other interested parties.
6. A "vision statement" identifying the goals of the PLAN.
7. Specific improvement guidelines for the downtown including:
 - a. Identification of public infrastructure improvements required regardless of implementation of the PLAN including gateway and special event locations. Coordination and integration of these required improvements with the recommended elements for the downtown area.
 - b. Streetscape design establishing criteria for street, sidewalk, site furnishings and lighting improvements.
 - c. Landscaping design establishing specific criteria for irrigation, plantings, flower pots, etc., either by individual property owners or public projects.
 - d. Modifications and/or additions to downtown parking.
8. Identification of potential funding source that could be pursued for the various downtown improvement elements.

EXHIBIT "A"

9. A timeline goal for implementation of the identified improvement elements.
10. Prepare preliminary cost estimates of the preferred concept improvements based on a typical block length.

Phase C: PLAN Adoption

1. Review the draft PLAN with City Staff.
2. Present the draft PLAN to City Council.
3. Assist the City during a public hearing on the PLAN.
4. Revise the draft PLAN as directed by the City for adoption by City Council and publish up to twenty (20) copies of the final PLAN.

EXHIBIT "A"

EXHIBIT "B"

**SCHEDULE OF RATES
FOR
HUIBREGTSE, LOUMAN ASSOCIATES, INC.**

(January 1, 2011, Through December 31, 2011)

Licensed Principal Engineer	\$159.00 per hour
Licensed Principal Land Surveyor	\$147.00 per hour
Licensed Professional Engineer	\$132.00 per hour
Licensed Professional Land Surveyor	\$120.00 per hour
Project Engineer	\$109.00 per hour
CAD Technician	\$95.00 per hour
Resident Engineer/Inspector	\$90.00 per hour
Surveyor	\$90.00 per hour
Senior Engineering Technician	\$90.00 per hour
Engineering Technician	\$63.00 per hour
Word Processing Technician	\$63.00 per hour
Surveyor on Two Man Crew	\$86.50 per hour
Surveyor on Three Man Crew	\$75.33 per hour
Vehicle Mileage	\$0.48 per mile
Global Positioning Survey System Fee	\$83.00 per hour

EXHIBIT "A"

EXHIBIT "B"

**SCHEDULE OF RATES
FOR
HUIBREGTSE, LOUMAN ASSOCIATES, INC.**

(January 1, 2012, Through December 31, 2012)

Licensed Principal Engineer	\$165.00 per hour
Licensed Principal Land Surveyor	\$151.00 per hour
Licensed Professional Engineer	\$136.00 per hour
Licensed Professional Land Surveyor	\$124.00 per hour
Project Engineer	\$112.00 per hour
CAD Technician	\$98.00 per hour
Resident Engineer/Inspector	\$93.00 per hour
Surveyor	\$93.00 per hour
Senior Engineering Technician	\$93.00 per hour
Engineering Technician	\$65.00 per hour
Word Processing Technician	\$65.00 per hour
Two Man Survey Party	\$89.00 per hour
Three Man Survey Party	\$77.67 per hour
Vehicle Mileage	\$0.50 per mile
Global Positioning Survey System Fee	\$85.00 per hour