

ORIGINAL

RESOLUTION 2012 - 25

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING AGREEMENT FOR
PROFESSIONAL SERVICES WITH
HUIBREGTSE, LOUMAN ASSOCIATES (HLA)
(Municipal Engineering Services)**

WHEREAS, the City of Sunnyside has previously solicited proposals from qualified persons and firms for consulting and engineering services; 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" – Schedule of Rates, should be approved; and

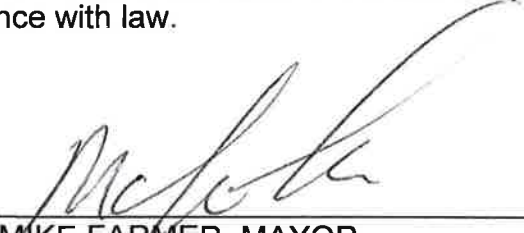
WHEREAS, the City Council finds and determines that such approval is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

**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 with HLA, which agreement 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 2nd day of April, 2012.



MIKE FARMER, MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



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

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT entered into this _____ day of April, 2012, by the CITY OF SUNNYSIDE, 818 East 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 _____, 2012, does hereby hire the CONSULTANT and the CONSULTANT agrees to perform professional engineering, surveying, and management services as requested by the CITY. Interim City Manager Frank A. Sweet, 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 as requested during the calendar years of 2012 and 2013. Such services to include the following types of work:
 - a. General municipal engineering tasks for street, storm drain, water, sanitary sewer, parks, and garbage including, but not limited to, development of studies, plans and reports; analysis of utility rates and infrastructure funds; design, plans and specifications and contract documents; and assistance with grant and loan funding applications and prospectuses.
 - b. Preparation of a Water System Plan, General Sewer Plan and Capital Improvement Plan.
 - c. Design, plans, specifications, and services during construction for sanitary sewer system improvements.
 - d. Design, plans, specifications, and services during construction for domestic water improvements.
 - e. Design, plans, specifications, and services during construction for street improvements.
 - f. Design, plans, specifications, and services during construction for storm drainage improvements.
 - g. Surveying tasks for right-of-way, easements, property boundaries, and subdivision of property.

EXHIBIT "A"

- h. Project cost estimates (opinions of cost), reports, and applications for funding.
- i. Miscellaneous engineering and surveying tasks as requested.

3. **TASK ORDERS/SPECIFIC HOURLY RATE BASIS:** Prior to commencement of any service to be performed through a task order, the CITY and CONSULTANT shall mutually agree upon and execute a task order for the specified service utilizing the general form of task order attached hereto as Exhibit "B" and by this reference incorporated herein. The task order shall describe the services to be provided, the time for performance of the service, the fee provisions for the services, and any provisions additional to this agreement. Execution by the CITY and CONSULTANT of subsequent task orders shall incorporate such subsequent task orders into this agreement.

Services to be performed on a specific hourly rate basis shall not require a task order, but shall only be performed upon authorization from the Interim City Manager, Deputy City Manager, or designated Department Head.

4. **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.

5. **COMPLETION TIMES:** The services called for under the various phases of Section 2 of this Agreement shall be completed as follows:

Services required for these tasks shall be completed within the times mutually determined by the CITY and the CONSULTANT.

6. **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:

According to Exhibit A - Schedule of Hourly Rates on a time spent basis plus reimbursement for direct non-salary expenses such as laboratory testing, reproduction expenses, out-of-town travel costs, long distance telephone calls,

EXHIBIT "A"

and outside consultants. Outside subconsultant's billings shall be marked up by a factor of 1.07 times the subconsultant billing.

7. **PAYMENT:** Monthly payments, payable according to Section 8 of this Agreement, based on the documented amount due.
8. **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.
9. **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.
10. **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 created by this Agreement, unless otherwise expressly provided, shall be terminated upon completion of all applicable requirements of the Agreement.
11. **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.

12. **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.

EXHIBIT "A"

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.

13. **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.
14. **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.
15. **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, 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.
16. **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.
17. **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.
18. **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 CONSULTANT 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:

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- 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.
19. **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, further, that the CONSULTANT's reliance on such information was reasonable under the circumstances.
20. **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.
21. **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.

EXHIBIT "A"

- 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 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.
22. **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.
23. **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.
24. **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.

EXHIBIT "A"

25. **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.
26. **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.

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

CITY OF SUNNYSIDE

Frank A. Sweet, Interim City Manager

ATTEST:

Delilah Saenz, City Clerk

(SEAL)

HUIBREGTSE, LOUMAN ASSOCIATES, INC.

Jeffrey T. Louman, President

EXHIBIT "A"

EXHIBIT "A"

**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
Surveyor on Two Man Crew	\$89.00 per hour
Surveyor on Three Man Crew	\$77.67 per hour
Vehicle Mileage	\$0.50 per mile
Global Positioning Survey System Fee	\$85.00 per hour

EXHIBIT "A"

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

(January 1, 2013, Through December 31, 2013)

Licensed Principal Engineer	\$170.00 per hour
Licensed Principal Land Surveyor	\$156.00 per hour
Licensed Professional Engineer	\$140.00 per hour
Licensed Professional Land Surveyor	\$128.00 per hour
Project Engineer	\$115.00 per hour
CAD Technician	\$101.00 per hour
Resident Engineer/Inspector	\$96.00 per hour
Surveyor	\$96.00 per hour
Senior Engineering Technician	\$96.00 per hour
Engineering Technician	\$67.00 per hour
Word Processing Technician	\$67.00 per hour
Surveyor on Two Man Crew	\$92.00 per hour
Surveyor on Three Man Crew	\$80.00 per hour
Vehicle Mileage	\$0.52 per mile
Global Positioning Survey System Fee	\$88.00 per hour

EXHIBIT "A"

EXHIBIT "B"

TASK ORDER NO. _____

REGARDING GENERAL AGREEMENT BETWEEN CITY OF SUNNYSIDE
AND
HUIBREGTSE, LOUMAN ASSOCIATES, INC.

Project Description:

Scope of Services:

Time of Performance:

Fee for Services:

Proposed:

Huibregtse, Louman Associates, Inc.
Jeffrey T. Louman, President

Date

Approved:

City of Sunnyside
Frank A. Sweet, Interim City Manager

Date