

RESOLUTION 2017 - 19

 ORIGINAL

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYSIDE, WASHINGTON, AUTHORIZING THIS INTERLOCAL
AGENCY AGREEMENT WITH YAKIMA COUNTY FOR
ON-CALL SERVICES ON FEDERAL FUNDED PROJECTS**

WHEREAS, the expenditure of federal funds requires that the project be designed and administered in accordance with the Washington State Department of Transportation Local Agency Guidelines, including certification by a certified acceptance agency (CA agency); and

WHEREAS, the City desires to use federal funds to undertake current and future City projects, and the County is presently certified to administer federal aid projects; and

WHEREAS, the Local Agency Guidelines provides that a noncertified local agency may enter into agreement with a CA agency to have the CA agency perform project development and/or contract administration; and

WHEREAS, the City may also require Right-of-Way Services, Engineering, Land Surveying, and/or Construction Management services from time to time to augment City Staff for these projects, and

WHEREAS, the COUNTY has an established organization that is capable of providing Right-of-Way Services, Engineering, Land Surveying, and Construction Management services and is empowered to provide such services to other governmental agencies pursuant to Chapter 39.34 RCW; and

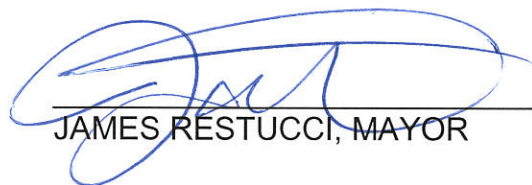
WHEREAS, the City, assures the COUNTY that the City's request for services under this AGREEMENT is not intended to exclude the use of Private Consultants by the City; and

WHEREAS, the City Council finds and determines that entering into such interlocal agreement is in the best interests of the 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:

1. That the City Council hereby authorizes an interlocal agency agreement with Yakima County for on-call services on federal funded projects, as attached hereto as Exhibit "A", and the City Manager is hereby authorized to enter into said agreement for and on behalf of the City of Sunnyside, and to prepare, execute and administer all documents and reports necessary or appropriate to accomplish the purposes of the agreement.
2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 14th day of August, 2017.



JAMES RESTUCCI, MAYOR

ATTEST:



DEBORAH ESTRADA, CMC, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP
Attorneys for the City of Sunnyside

EXHIBIT A

**CITY OF SUNNYSIDE AND YAKIMA COUNTY
INTERLOCAL AGENCY AGREEMENT
FOR ON-CALL SERVICES ON
FEDERAL FUNDED PROJECTS**

THIS AGREEMENT is entered into between Yakima County, Washington (hereinafter the "County") through its Public Services Department whose address is 128 North 2nd Street, Yakima, Washington, 98901, and the City of Sunnyside (hereinafter the "City") whose address is 818 East Edison Avenue, Sunnyside, Washington, 98944, pursuant to RCW 39.34.080.

WHEREAS, the City desires to use federal funds to undertake current and future City projects; and,

WHEREAS, the expenditure of federal funds requires that the project be designed and administered in accordance with the Washington State Department of Transportation Local Agency Guidelines, including certification by a certified acceptance agency (CA agency); and,

WHEREAS, the City is not presently certified to administer federal aid projects; and,

WHEREAS, the County is presently certified to administer federal aid projects; and,

WHEREAS, The Local Agency Guidelines provides that a noncertified local agency may enter into agreement with a CA agency to have the CA agency perform project development and/or contract administration; and,

WHEREAS, the City may also require Right-of-Way Services, Engineering, Land Surveying, and/or Construction Management services from time to time to augment City Staff for these projects, and,

WHEREAS, the COUNTY has an established organization that is capable of providing Right-of-Way Services, Engineering, Land Surveying, and Construction Management services and is empowered to provide such services to other governmental agencies pursuant to Chapter 39.34 RCW; and,

WHEREAS, the City, assures the COUNTY that the City's request for services under this AGREEMENT is not intended to exclude the use of Private Consultants by the City; and,

WHEREAS, the City may desire to obtain such services from the COUNTY and the COUNTY is willing to furnish such services to the City, and both deem it in the interest of the public to enter into this AGREEMENT; and,

WHEREAS, the actual work to be performed shall be specified in a Task Assignment signed by both parties; and,

WHEREAS, the City shall pay for any work identified in a Task Assignment as specified by the terms of the Task Assignment and this AGREEMENT;

EXHIBIT A

WHEREAS, the accomplishment of the project is a benefit to the regional transportation system,

NOW, THEREFORE, in consideration of the stated premise and in the interest of providing assistance to the City in the above mentioned areas, the parties hereto agree as follows:

I GENERAL

- A. The COUNTY shall provide the City with Engineering, Land Surveying and Construction Inspection services. Any such services shall conform to the Standards and Guidelines commonly established for these services. All work to be performed shall be identified in a Task Assignment signed by both parties.
- B. The normal workload of the County will be evaluated prior to accepting any Task Assignment. Once a Task Assignment is accepted by the County, any work performed under the Task Assignment shall be pursued with care and diligence, making every effort to meet the schedule established by the City in the Task Assignment. The COUNTY shall promptly notify the City of any hardship or other inability to meet the schedule identified in the Task Assignment.
- C. This AGREEMENT may be increased or decreased in scope or character of work to be performed if such change becomes necessary, but any such change shall be accomplished by written supplement executed by all parties to said AGREEMENT.
- D. The parties shall agree on a satisfactory completion date for work performed under any Task Assignment ("work completion date"), which shall be specified in the Task assignment. The City shall, upon satisfactory completion of work performed pursuant to a Task Assignment, issue a letter of acceptance that shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the work under the Task Assignment. If the COUNTY does not receive a letter of acceptance within 90 days following the work completion date, the work will be considered accepted by the City. The City may withhold acceptance of work by submitting written notification to the COUNTY within a 90-day period. This notification shall include the reasons for withholding acceptance.

II WORK ASSIGNMENT/REQUEST

- A. Specific assignments shall be made in the form of a written Task Assignment to the COUNTY by the City and signed by both parties. Each Task Assignment shall contain an agreed upon budget and schedule for all services to be rendered. City approval is required for budget and schedule changes. The City shall make such assignments before any work is commenced by the County.
- B. The City shall make available to the COUNTY all information that has been compiled by or is available to the City concerning the project to be completed.
- C. The COUNTY shall furnish all labor, materials, supplies, and incidentals necessary to complete the work assigned by the City and shall furnish to the City all information prepared by the COUNTY in performance of each task.

III

EXHIBIT A

PAYMENT

The COUNTY shall be paid by the City for completed work and for services rendered under this AGREEMENT and associated Task Assignments, upon acceptance by the City, as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and accepted by the City and for all labor, materials, supplies, and incidentals necessary to complete the work. The COUNTY acknowledges and agrees that only those costs actually allocable to a project shall be charged to such project.

- A. The COUNTY shall be reimbursed in full by the City for its direct and related indirect costs accumulated in accordance with its current accounting procedures. The reimbursement amount shall not exceed \$5,000 (five thousand dollars) without written authorization from the City.
- B. Partial payments will be made by the City within 30 days of receipt of the billings from the COUNTY. Billings will not be more frequent than one per month. It is agreed that payment of any particular claim will not constitute agreement as to the appropriateness of any item and that at the time of final billing all required adjustments will be made.
- C. Upon termination of this AGREEMENT as provided in Section VI, the COUNTY shall be paid by the City for services rendered to the effective date of termination less all payments previously made. No payment shall be made by the CITY for any expense incurred or work done following the effective date of termination unless authorized, in writing, by the City.
- D. Final payment of any balance due the COUNTY of the ultimate gross reimbursable amount, prior to the effective date of termination, will be made upon ascertainment of such balance by the COUNTY and certification thereof to the City.

IV LEGAL RELATIONS

- A. **INDEMNIFICATION:** The City does hereby release, indemnify and provide to defend and save harmless Yakima County from and against any and all liability, loss, damage, expense, actions and claims, including costs and reasonable attorney's fees incurred by the City in defense thereof, asserted or arising directly on account of or out of acts or omissions of the City and their City's agents, employees and contractors in the exercise of the rights herein; PROVIDED, this paragraph does not purport to indemnify the County against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of (a) County or County's agents or employees; and PROVIDED FURTHER, that if the claims or damages are caused by a result from the concurrent negligence of the County, its authorized agents, officers or employees and (b) City's authorized agents, officers or employees or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the City or its authorized agents, contractors or employees. Nothing in this indemnification clause shall be construed to apply to any actions, proceedings, suits, or claims for inverse condemnation, or condemnation, arising under Title 8, Chapter 8.08, Sections 8.08.005 thru 8.08.130 of the Revised Code of Washington or otherwise.
- B. City's Waiver of Employer's Immunity under Title 51 RCW: The City intends that its obligations to indemnify, defend, and hold harmless employee contributions set forth above in sections A, above, shall operate with full effect regardless of any provision contrary in Title 51 RCW, Washington Industrial Insurance Act. Accordingly, the City specifically assumes all potential liability for defense and payment of

EXHIBIT A

judgement in all actions brought to employees of the City against the County and its officers, employees, and volunteers, and for the purposes of enforcing the City's obligations to indemnify, defend, and hold harmless set forth above in section 4, the City, specifically waives any immunity granted under the state industrial insurance law, Title 51 RCW. The parties have mutually negotiated this waiver. The City shall similarly require that any subcontractor it retains in connection with its performance of this Agreement shall comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by employees of the subcontractor.

C. DISPUTE RESOLUTION:

1. The City and the COUNTY shall confer to resolve disputes that arise under this AGREEMENT as requested by either party.
2. The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this agreement:

Shane Fisher, City of Sunnyside
County Engineer, Yakima County

- D. The City and the COUNTY agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted. Laws, venue, jurisdiction. This Agreement shall be governed by the laws of the State of Washington. Any action, suit, or judicial proceeding for the enforcement of this Agreement shall be brought in the Superior Court for the State of Washington in Yakima County, Washington.
- E. **TERM:** The initial term of this contract will be for a period of one year from the effective date. The County may, at its option, extend the contract on a year to year basis for up to four additional years provided however, that either party may at any time during the life of this contract, or any extension thereof, terminate this contract by giving thirty (30) days' notice in writing to the other party of its intention to cancel. Contract extensions shall be automatic, and shall go into effect without written confirmation, unless the County provides advance notice of the intention to not renew or the compensation established in section 3 is exhausted.

V.

NONDISCRIMINATION

The City and COUNTY mutually agree that neither entity will discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, veteran status, pregnancy, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) or any other applicable state, federal or local law, rule or regulation. The City and COUNTY, and any subcontractors employed by either entity shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a) in the selection and retention of agents, subcontractors or in the procurement of services or materials, leases, or equipment. These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

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VI COMMENCEMENT AND TERMINATION OF AGREEMENT

The work is of a continuing nature and will be in force as of the date of this AGREEMENT. The COUNTY may terminate this AGREEMENT at any time upon not less than sixty (60) days written notice to the CITY with or without cause. The CITY may terminate this AGREEMENT or Task Assignment at any time, as provided in paragraph (E), above; provided that the CITY agrees to reimburse the COUNTY for all direct and indirect costs incurred for work performed and accepted by the CITY up to the date of termination. Upon termination of this AGREEMENT, the COUNTY will turn over to the City all Project records.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the date executed by both parties.

EXHIBIT A

DONE this ____ day of _____ 2017

CITY OF
SUNNYSIDE
COMMISSIONERS

BOARD OF YAKIMA COUNTY
COMMISSIONERS

Signature

J. Rand Elliot, Chairman

Print or Type Name

Ron Anderson, Commissioner

Title

Michael D. Leita, Commissioner
*Constituting the Board of County Commissioners
for Yakima County, Washington*

Date Signed

Attest:

Attest:

Tiera L. Girard, Clerk of the Board

Approved as to form:

By: _____

Deputy Prosecuting Attorney