

RESOLUTION 2023 - 33

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, AUTHORIZING
THE CITY MANAGER TO ENTER INTO A FUEL TAX
AGREEMENT WITH THE WASHINGTON STATE
TRANSPORTATION IMPROVEMENT BOARD
TO RECONSTRUCT YAKIMA VALLEY HIGHWAY**

WHEREAS, on July 24, 2023, the City Council of the City of Sunnyside authorized the submittal of a grant application to the Washington State Transportation Improvement Board (TIB) for funding to reconstruct the roadway on Yakima Valley Highway between 1st Street and 6th Street; and

WHEREAS, on December 4, 2023, the City of Sunnyside was notified by TIB that a grant in the amount of \$425,871 was approved to fund these improvements. The match requirement for this grant is \$47,319 and will be paid out of the Transportation Benefit District funds; and

WHEREAS, TIB will fund lane widths of up to 12 feet wide, and the City desires to improve the entire roadway width, an additional match amount of 106,930 is required to be paid out of the Transportation Benefit District funds; and

WHEREAS, the City Council finds and determines that authorizing the City Manager to accept the grant funds for the before mentioned project, is in the best interest of the residents of the City of Sunnyside and will promote the general health, safety and welfare;

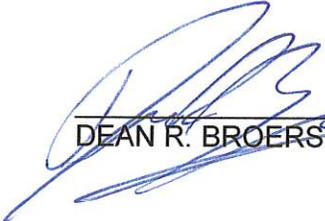
**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

SECTION 1. That the City Council of the City of Sunnyside hereby authorizes the City Manager to accept these grant funds, attached hereto as Exhibit "A" and, and act on behalf of the City of Sunnyside and to take

all actions reasonable and necessary to administer these funds with full contractual authority including HLA Task Order attached hereto as Exhibit "B".

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

PASSED this 11th day of December, 2023.



DEAN R. BROERSMA, MAYOR

ATTEST:



JACQUELINE RENTERIA, CITY CLERK

APPROVED AS TO FORM:
SAXTON, RILEY & RILEY, PLLC:



BENJAMIN J. RILEY
Attorneys for the City of Sunnyside



EXHIBIT A

Washington State Transportation Improvement Board
Fuel Tax Grant Agreement

3-E-179(004)-1

City of Sunnyside
3-E-179(004)-1
Yakima Valley Highway Overlay
1st St to 6th St

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
City of Sunnyside
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the Yakima Valley Highway Overlay, 1st St to 6th St (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Sunnyside, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

For the project specified above, TIB shall pay 90.0000 percent of approved eligible project costs up to the amount of \$425,871, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT'S Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT'S submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

- a) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as



EXHIBIT A

Washington State Transportation Improvement Board Fuel Tax Grant Agreement

3-E-179(004)-1

often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

6.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9.0 DEFAULT AND TERMINATION

9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:



EXHIBIT A

Washington State Transportation Improvement Board Fuel Tax Grant Agreement

3-E-179(004)-1

- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

9.3 TERMINATION

- a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.
- b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the maximum payable TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for all costs incurred in excess of the maximum amount payable by TIB. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the intended ratio between TIB funds and total project costs, as described in Section 1.0 of this Agreement.



12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The PARTIES 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.



Date: December 6, 2023

Project No.: 23211E/C

To: City of Sunnyside
818 East Edison Avenue
Sunnyside, WA 98944

Attention: Raul Sanchez
Public Works Director

From: Stephanie J. Ray, PE

Re: Yakima Valley Highway Overlay
Task Order No. 2023-08
TIB Project No. 3-E-179(004)-1

We are sending you the attached following items:

Two (2) Original Signed Task Order No. 2023-08 Agreements

Comment:

Raul,

Attached for your review and consideration are two (2) signed original Task Order No. 2023-08 agreements for the Yakima Valley Highway Overlay project.

Please execute the Task Order agreements and return one signed original to our office.

We very much appreciate the opportunity to work with you and serve the City of Sunnyside. If you have any questions or need additional information, please contact me.

Thank you.

Copy to: _____ Signed: 

EXHIBIT B

TASK ORDER NO. 2023-08

REGARDING GENERAL AGREEMENT BETWEEN CITY OF SUNNYSIDE

AND

HLA ENGINEERING AND LAND SURVEYING, INC. (HLA)

PROJECT DESCRIPTION:

Yakima Valley Highway Overlay

HLA Project No. 23211E/C

TIB Project No. 3-E-179 (004)-1

The City of Sunnyside (CITY) has received Arterial Preservation Program (APP) funding from the Washington State Transportation Improvement Board (TIB) for the resurfacing of the driving lanes on Yakima Valley Highway, between 1st Street and 6th Street. The City of Sunnyside is providing funding for extra width of lanes over 12 feet wide for design engineering, construction administration, and construction. Engineering design work will begin immediately following Task Order approval. Construction is anticipated to occur during the summer of 2024.

SCOPE OF SERVICES:

At the direction of the CITY, HLA will provide professional engineering services for the Yakima Valley Highway Overlay project (PROJECT). HLA shall provide a comprehensive civil engineering construction document package (plans, specifications, and estimate) for improvements, including resurfacing of roadway, ADA compliant sidewalk ramps, crack sealing, and pavement markings. Services will also include advertising and bidding, recommendation of contract award, and engineering services during construction.

HLA shall provide the following services:

1.0 Design Engineering

- 1.1 Call for utility locates prior to survey and perform topographic survey of the PROJECT area.
- 1.2 Prepare site topographic survey in AutoCAD format showing field-located improvements and utilities.
- 1.3 Attend one (1) design meeting with the CITY to obtain input regarding existing and proposed improvements.
- 1.4 Prepare complete plan set, including plan sheets with construction notes and plan details.
- 1.5 Prepare final engineer's construction cost estimate.
- 1.6 Prepare final PROJECT specifications.
- 1.7 Submit final documents to the CITY for review and approval.
- 1.8 Incorporate CITY review comments and provide final construction documents for bidding approval.
- 1.9 Submit final documents to TIB for review and bid authorization.
- 1.10 Prepare advertisement for bids and transmit them to newspapers as selected by the CITY. Advertising fees to be paid by the CITY.

EXHIBIT B

- 1.11 Post contract documents to HLA website for potential bidders and plan center access and maintain planholder list.
- 1.12 Notify dry utility companies of pending construction, including power, cable, natural gas, and telephone and direct them to HLA website for plans and specifications.
- 1.13 Prepare any required addenda to contract documents, if necessary.
- 1.14 Answer questions during bidding from prospective bidders.
- 1.15 Attend PROJECT bid opening, check and tabulate bids, and make recommendation of award to lowest responsible bidder.
- 1.16 Submit bid tabulation to TIB and prepare Updated Cost Estimate (UCE).

2.0 Construction Engineering

- 2.1 Following award of the contract by the CITY, prepare Notice of Award to the Contractor.
- 2.2 Coordinate execution of construction contract with CITY and Contractor, including review of bond and insurance requirements.
- 2.3 Coordinate and conduct preconstruction conference with the CITY, Contractor, private utilities, and affected agencies followed by issuance of Notice to Proceed.
- 2.4 Furnish the field survey crew to set horizontal and vertical control for the PROJECT, including construction staking.
- 2.5 Furnish a qualified resident engineer (inspector) to observe construction for substantial compliance with plans and specifications and CITY Construction Standards.
- 2.6 Provide submittal review for PROJECT materials as provided by the Contractor per the PROJECT specifications.
- 2.7 Attend construction meetings.
- 2.8 Prepare construction progress reports for days the resident engineer is present.
- 2.9 Perform measurement and computation of pay items and prepare and file progress reports for the PROJECT with the CITY. Recommend progress payments monthly for the Contractor to the CITY.
- 2.10 Prepare and submit proposed contract change orders when applicable.
- 2.11 Conduct final PROJECT walk-through inspection with the CITY and Contractor and prepare punchlist of items to be corrected by the Contractor and provide to the CITY.
- 2.12 Prepare and furnish record drawings and field notes of all completed work in accordance with PROJECT field records provided by the resident engineer.
- 2.13 Prepare administrative documents for the appropriate agencies which have jurisdiction over funding, design, and construction of the PROJECT.
- 2.14 Monitor Contractor's compliance with the contract documents for labor standards and review Statements of Intent to pay Prevailing Wages and Affidavits of Wages Paid.

EXHIBIT B

3.0 Additional Services

Provide professional engineering and land surveying services for additional work requested by the CITY that is not included above.

4.0 Items to be Furnished and Responsibility of CITY

- 4.1 Provide full information as to CITY requirements of the PROJECT.
- 4.2 Pay for PROJECT advertising, notices or other publications as may be required by the funding source.
- 4.3 Assist HLA by providing all available information pertinent to the PROJECT, including previous reports, drawings, plats, surveys, utility records, and any other data relative to design and construction of the PROJECT.
- 4.4 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by HLA, and provide written decisions within a reasonable time so as not to delay the work of HLA.
- 4.5 Obtain approval of all governmental authorities with jurisdiction over the PROJECT, and approvals and consents from other individuals or bodies as necessary for completion. Pay all review fees and costs associated with obtaining such approvals.

TIME OF PERFORMANCE:

HLA will diligently pursue completion of the PROJECT with the following schedule anticipated:

1.0 Design Engineering

Completion of plans, specifications, opinion of cost, and bidding services within one hundred (100) working days following receipt of signed Task Order.

2.0 Construction Engineering

It is estimated construction of improvements will be completed within twenty (20) working days following award of the contract and Notice to Proceed.

3.0 Additional Services

Time for completion of work directed by the CITY under Additional Services shall be negotiated and mutually agreed upon at the time service is requested by the CITY.

FEE FOR SERVICE:

1.0 Design Engineering

All work for Design Engineering services shall be performed for the Lump Sum fee of \$66,360.00.

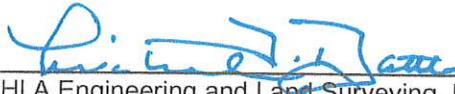
2.0 Construction Engineering

All work for Construction Engineering services shall be completed on an hourly basis, at normal hourly billing rates, for the estimated maximum fee of \$66,360.00. If the Contractor is granted additional working days beyond those identified in the Time of Performance, then work shall be considered Additional Services.

EXHIBIT B

3.0 Additional Services

Additional work requested by the CITY not included in this Task Order shall be authorized by the CITY and agreed upon by HLA in writing prior to proceeding with services. HLA will perform additional services as directed/authorized by the CITY on a time-spent basis at the hourly billing rates included in our General Agreement, plus reimbursement for direct non-salary expenses such as laboratory testing, printing expenses, vehicle mileage, out-of-town travel costs, and outside consultants.

Proposed:  12/6/2023
HLA Engineering and Land Surveying, Inc. Date
Michael T. Battle, PE, President

Approved: _____ Date _____
City of Sunnyside
Elizabeth Alba, City Manager