



SELAH CITY COUNCIL

September 13, 2022

5:30pm: Regular Scheduled Meeting

Each item on the Council Agenda is covered by an
Agenda Item Sheet (AIS)

A yellow AIS indicates an action item.

A blue AIS indicates an information/non-action



Selah City Council
Meeting Date: 9/13/2022
5:30pm: Regular Meeting

Mayor: Sherry Raymond
Mayor Pro Temp: Russell Carlson
Council Members: Kevin Wickenhagen
Jared Iverson
Elizabeth Marquis
Clifford Peterson
Roger Bell
Michael Costello

City of Selah
115 W. Naches Ave
Selah, WA 98942

City Administrator: Joe Henne
City Attorney: Rob Case
Clerk/Treasurer: Dale Novobielski

AGENDA

- A. **Call to Order – Mayor Raymond**
- B. **Roll Call**
- C. **Councilmember Absence**
- D. **Pledge of Allegiance**
- E. **Invocation provided by Matt Alexander from Stone Church, Selah**
- F. **Agenda Changes**
- G. **Public Appearances/Introductions/Presentations**
Katrina Henkle, Selah Downtown Association – Update
- H. **Getting To Know Our Businesses** **None**
- I. **Communications**

The City of Selah is a non-charter code city and we are presently conducting a regular meeting between the Mayor and City Council. A maximum of thirty minutes will be allotted for public comments. Common-sense standards of decorum apply. Comments must be respectful; no profanity or insults are allowed. Comments must pertain to City business and official actions. Constructive criticism of City officials is allowed, but defamation, personal attacks and impertinent assertions are not allowed. Commenters are limited to one comment per meeting and a maximum of two minutes. City staff may disallow or modify any comment that is deemed inappropriate. These standards are subject to revision.

- 1. Oral **None**
- 2. Written
Brian Harris

RE: Options of rental agreement and Selah Police Station

J. **Proclamations/Announcements**

K. **Consent Agenda**

All items listed with an asterisk (*) are considered routine by the City Council and will be enacted by one motion, without discussion. Should any Council Member request that any item of the Consent Agenda be considered separately, that item will be removed from the Consent Agenda and become a part of the regular Agenda.

- | | |
|--------------------|---|
| * Treesa Morales | 1. Approval of Minutes: August 23, 2022 Council Meeting |
| * Dale Novobielski | 2. Approval of Claims & Payroll |
| * Rocky Wallace | N-1*: Resolution Authorizing the Mayor to sign Task Order No. 2021-13 Addendum No.1 between the City of Selah and HLA Engineering and Land Surveying, Inc. for work on the Fremont Avenue Resurfacing Project |
| * Rocky Wallace | N-2*: Resolution authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement for the Valleyview/South Third Street/Southern Avenue Improvements Project. |

L. **Public Hearings**

M. **General Business**

- | | |
|-----------------|-------------|
| 1. New Business | None |
| 2. Old Business | None |

N. **Resolutions**

- | | | |
|------------------|------|---|
| Rocky
Wallace | N-1* | Resolution Authorizing the Mayor to sign Task Order No. 2021-13 Addendum No.1 between the City of Selah and HLA Engineering and Land Surveying, Inc. for work on the Fremont Avenue Resurfacing Project |
| Rocky
Wallace | N-2* | Resolution authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement for the Valleyview/South Third Street/Southern Avenue Improvements Project. |

O. Ordinances

Rob Case O-1 Ordinance Adding a New Chapter 8.77 to the Selah Municipal Code, Entitled "Wheeled All-Terrain Vehicles (WATVs) on Public Roadways"

P. Public Appearances **None**

Q. Reports/Announcements

- | | | |
|----|--------------------|-------------|
| 1. | Departments | |
| 2. | Council Members | |
| 3. | City Administrator | |
| 4. | City Attorney | |
| 5. | Boards | None |
| 6. | Mayor | |

R. Executive Session **None**

S. Adjournment

Next Regular Meeting: September 27, 2022



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/13/2022

Agenda Number: I-2

Informational Item

Title: Written Comment

From: Brian Harris, Resident

Action Requested: Informational - No Action Needed

Staff Recommendation: N/A

Board/Commission Recommendation: N/A

Fiscal Impact: N/A

Funding Source: N/A

Background/Findings/Facts: See public comment.

Recommended Motion: N/A

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken:** None

From: Selah Webmaster
Sent: Tuesday, August 16, 2022 7:40 PM
To: Morales, Treesa
Subject: New Public Comment Submission

Meeting Type / Tipo de Reunión

Council meeting

Meeting Date / Fecha de la Reunión

09/13/2022

Topic / Tema

617 s first Street (Selah Police Station). Regards to options of rental agreement and cost of police station rent compared to New cost of police station.

How would you like to provide your comment? / ¿Cómo le gustaría dar su comentario?

I will attend the virtual meeting via Zoom Webinar to provide my comment. / Asistiré a la reunión para comentar.

How will you attend the meeting? / ¿Cómo te unirás a la reunión virtual?

I will join the Zoom Webinar. If so, please provide your name in the form below in order for the Clerk to identify you. / Me uniré al seminario webinar de Zoom. Si es así, proporcione su nombre en la forma abajo para que la secretaria lo identifique.

First & Last Name / Nombre y Apellido

Brian Harris

Registered Voter?

No

Residency / Residencia

Selah 98942
United States
[Map It](#)

Phone Number / Número de Teléfono

(509) 952-7333

Email Address / Correo Electrónico

brianharris0807@gmail.com

Written Comment / Comentario Escrito Público

I would like to attend the council meeting in person on Tuesday the 13th of September 2022.



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/13/2022

Agenda Number: K-1

Action Item

Title: Approval of Minutes, August 23, 2022 Regular Council Meeting

From: Treesa Morales, Public Records Officer

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: N/A

Funding Source: N/A

Background/Findings/Facts: N/A

Recommended Motion: I move to approve the Consent Agenda in the form presented (This item is part of the consent agenda).

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken:** None

City of Selah
City Council Meeting Minutes
August 23, 2022
Regular Meeting

A. Call to Order: Mayor Raymond called the meeting to order at 5:30 pm.

B. Roll Call

Members Present: Kevin Wickenhagen, Jared Iverson; Elizabeth Marquis; Clifford Peterson; Roger Bell; Michael Costello, Russell Carlson

Staff Present: Joe Henne, City Administrator; Rob Case, City Attorney; Dan Christman, Chief of Police; James Lange, Fire Chief; Zack Schab, Recreation Director; Rocky Wallace, Public Works Director; Dale Novobielski, City Clerk/Treasurer; Jeff Peters, Community Development Supervisor; Treesa Morales, Public Records Manager.

C. Councilmember Absence **None**

D. Pledge of Allegiance

E. Invocation: Jason Williams from Harvest Community Church gave prayer

F. Agenda Changes **None**

G. Public Appearances/Introductions/Presentations

1. Katrina Henkle from the Selah Downtown Association gave report and updated council on events happening around town.

H. Getting To Know Our Businesses **None**

I. Communications

J. Proclamations/Announcements

Proclamation #2022-03: Public Proclamation by the Mayor of Selah Regarding Temporary Signs Along Roadways.

Mayor Raymond read the proclamation.

K. Consent Agenda (all items listed with an asterisk (*) are considered part of the consent agenda and are enacted in one motion).

Councilmember Bell moved to approve the consent agenda as written. Councilmember Peterson seconded. By voice vote, motion passes.

Public Records Manager, Treesa Morales, read the Consent Agenda:

- | | | |
|-------------------|-----|---|
| *Treesa Morales | 1. | Approval of Minutes: August 9, 2022 Council Meeting |
| *Dale Novobielski | 2. | Approval of Claims and Payroll:
Payroll Checks No. 85039-85064 for a total of \$325,100.46
Claim Checks No. 178510-178578 for a total of \$989,465.93 |
| *Rocky Wallace | N-3 | Resolution Accepting the 2022 Crack Seal Project Complete. |
| *Rocky Wallace | N-4 | Resolution authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency Project Prospectus for the Valleyview/South Third Street/Southern Avenue Improvements Project. |
| *Rocky Wallace | N-4 | Resolution authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency Agreement Supplement Number 3, to Obligate Construction funding for the Valleyview/South Third Street/Southern Avenue Improvements Project. |
| *Dale Novobielski | O-1 | Ordinance amending the 2022 budget for the APRA funds. |

L. Public Hearings

1. Public Hearing to Consider Proposed Revisions to Standards of Decorum for Public Comments at City Council Meetings

Introduced by Mayor Raymond and presented by City Attorney Rob Case. Mr. Case gave details regarding the purpose behind the hearing and clarified no vote would be taken.

5:42pm Mayor Raymond opened the public hearing

Councilmember Wickenhagen stated his approval and acceptance for the changes.

Mayor Raymond asked if anyone else had a comment. Seeing no one,

5:43pm Mayor Raymond closed the public hearing

M. General Business

1. New Business **None**
2. Old Business

Joe Henne

1. Contract information update for the City's Solid Waste Contract

Introduced by Mayor Raymond and presented by City Administrator, Joe Henne. Mr. Henne gave details on the Basin Solid Waste Contract. Mr. Henne stated the existing contract provides for fuel, recycling, rate increase based on CPI, etc. Mr. Henne mentioned the council concerns over the contract for fruit waste and stated as long as the fruit companies don't have solid waste items in their byproduct, they can dispose as current contract states.

Councilmember Peterson asked when the contract expired. Mr. Henne stated the contract has a current rolling expiration date, but parties can cancel in January or February of the year of interest.

Councilmember Carlson asked if the City gave notice. Mr. Henne said he can't find any documentation confirming yes or no.

Councilmember Carlson asked if BDI has reported anything regarding notice. Stated it was his understanding that the City had given notice. Mr. Henne said he can ask.

Mr. Henne also said he wants to resolve the issue of recycling and stated there is an effort to reduce waste, nationwide, and the City will have to oblige when required.

Rebecca, representative from BDI, approached the podium.

Councilmember Carlson asked about the letter and if BDI has received notice from the City. Rebecca said, by their understanding, no letter has been submitted.

Councilmember Carlson asked about the recycling proposal. Rebecca gave information and discussed options. Councilmember Carlson asked if new proposal would require payment for recycling. Rebecca confirmed, yes, the new contract has a cost for recycling.

Councilmember Wickenhagen asked about the 2024-yard waste cost. Rebecca said she talked to two lawyers, and based on comparisons to Cities of similar size, they still aren't sure. The County is big enough to qualify, but the City is not. Rebecca said she would provide an answer when available.

Councilmember Iverson asked about the spring clean up event. Asked if under the new contract, if it would still be an option. Rebecca clarified that if the Council does not go with the unlimited contract, the price would need to be negotiated.

Councilmember Carlson asked Mr. Henne if it is the staff's recommendation to keep the current contract. Mr. Henne confirmed, yes.

Rebecca asked Mr. Henne about recycling, asked if the City plans to continue? Mr. Henne asked which items would change? Rebecca stated mixed paper is going down in cost, and said the only positive commodity is tin cans and aluminum. Rebecca also stated that cardboard is not below profit yet, but it's headed that way.

Councilmember Iverson asked about a spreadsheet that tracks data over time. Rebecca said she doesn't have a spreadsheet but she has monthly reports she is happy to share.

Councilmember Iverson asked about the recycling, asked if Basin currently covers the cost and if so, when does that end? Rebecca said the new contract will still have a rolling date.

Councilmember Wickenhagen asked when does the City need to decide to go with recycling or not? Asked when will council have the information? Mr. Henne said the contract has been provided to council, and there have been multiple meetings. Mr. Henne also said staff has been working with BDI and would be sorting out the details. Rebecca also said she gave information about opting out to staff and mentioned that the current contract obligates Selah to do recycling the same as City of Yakima. Rebecca reminded council that the contract states BDI must collect everything or nothing, Selah can't select items. Mr. Henne said he wasn't sure on that, but that he'd check. Councilmember Wickenhagen asked council why the City should do this if the citizens don't want it, and discussed cost forwarding to citizens if the goods are not actually being recycled at the end point.

Rebecca provided feedback for options in the new contract to select which items are recycled, and also gave information about the market for recycled goods.

Councilmember Costello asked how many residents are currently signed up. Mr. Henne said he wasn't sure. Rebecca mentioned that an estimated 30% would sign up if they had to pay. Councilmember Carlson asked about cost of subscription – asked if it was cheaper for a household to recycle or just do garbage. Rebecca said it would be cheaper on the customer to add recycling. Councilmember Carlson suggested to council that it seems worth it for the City to pay a small fee for recycling to help the customer save money. Councilmember Carlson suggested to keep the current contract and negotiate in recycling. Rebecca said if the City negotiates in recycling, fuel rates will change; she asked if Council wanted BDI to come every two months to present rate changes?

Mr. Henne asked if the biggest issue with the current contract was recycling? Rebecca said yes, and that the new contract also has new insurance requirements. Rebecca also requested the Council make a decision as soon as possible.

End of discussion.

N. Resolutions

N-1 Resolution Authorizing the Mayor to sign a 5 year Planned Equipment Maintenance Agreement between Cummins Inc. and Selah Fire Department.

Introduced by Mayor Raymond and presented by Fire Chief, James Lange.

Councilmember Carlson asked how much maintenance was provided in the first year? Chief Lange gave information.

Councilmember Carlson asked if there were other companies in the valley who provide this service? Chief Lange stated it was the only one locally.

Councilmember Costello moved to approve the Resolution as written. Councilmember Carlson seconded.

Councilmember Wickenhagen asked if Chief Lange could provide a report of maintenance provided last year. Chief Lange stated yes, a report could be provided upon request and also one was provided for the first year.

Roll was called. Councilmember Wickenhagen – yes; Councilmember Iverson – yes; Councilmember Marquis – yes; Councilmember Peterson – yes; Councilmember Bell – yes; Councilmember Costello – yes; Councilmember Carlson – yes. By voice vote, motion passes to approve the Resolution Authorizing the Mayor to sign a 5 year Planned Equipment Maintenance Agreement between Cummins Inc. and Selah Fire Department.

N-2 Resolution Authorizing the Mayor to Sign a Nine-Page Joint Operating Agreement with Yakima County Fire Protection District No. 2.

Introduced by Mayor Raymond, and presented by Chief Lange who gave details and pointed out a typo on page 8, 16.2 that would be corrected.

Councilmember Bell moved to approve the Resolution with the mentioned correction. Councilmember Peterson seconded.

Roll was called. Councilmember Wickenhagen – yes; Councilmember Iverson – yes; Councilmember Marquis – yes; Councilmember Peterson – yes; Councilmember Bell – yes; Councilmember Costello – yes; Councilmember Carlson – yes. By voice vote, motion passes to approve the Resolution Authorizing the Mayor to Sign a Nine-Page Joint Operating Agreement with Yakima County Fire Protection District No. 2.

N-3* Resolution Accepting the 2022 Crack Seal Project Complete.

Resolution N-3 was passed in one vote during the approval of the consent agenda.

N-4* Resolution authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency Project Prospectus for the Valleyview/South Third Street/Southern Avenue Improvements Project.

Resolution N-4 was passed in one vote during the approval of the consent agenda.

N-5* Resolution authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency Agreement Supplement Number 3, to Obligate Construction funding for the Valleyview/South Third Street/Southern Avenue Improvements Project.

Resolution N-5 was passed in one vote during the approval of the consent agenda.

O. Ordinances

O-1 Ordinance amending the 2022 budget for the APRA funds.

Ordinance O-1 was passed in one vote during the approval of the consent agenda.

P.	Public Appearances	None
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Q. Reports/Announcements

1. Departments

- Zack Schab – no report
- Chief Lange gave report.

Councilmember Wickenhagen asked about call volume. Chief stated the 70% of the department calls are EMS, and 30% are for fire, and that call volume is growing at the same percentage. Chief also mentioned that the department is 200 calls over what they were at the same time last year. Councilmember Wickenhagen asked how things were going with dispatch out of the lower valley. Chief said, excellent. Councilmember Bell expressed appreciation for 10 year rolling plan.

- Chief Christman gave report.

Councilmember Carlson commented on the Citizens Academy and asked about the Body Cameras. Chief said Axon would be at Selah PD on September 16th to provide training, and that the policy has been given to the City Attorney for approval so roll out should go smoothly. Councilmember Carlson asked about vehicles. Chief said the department ordered 4 vehicles, which they are still waiting on but expecting them to arrive between September and November this year. Chief mentioned again about the lease vehicle program and gave thoughts on the upcoming DCR study session. Mayor Raymond asked about the UTV ordinance. Chief Christman the draft was on the Attorney's desk, and once approved it would be brought to council.

- Mr. Peters – no report.

Councilmember Carlson asked about sewer on Crusher Canyon and new developers. Mr. Peters said a few local builders expressed interested, but no applications yet. Councilmember Wickenhagen asked about developing in parts not in the Urban Growth Boundary. Mr. Peters gave information and explained it would probably be a year or more before lots would be built.

- Mr. Wallace gave report.

Councilmember Bell asked about unfinished sidewalks on Naches up Crusher Canyon road and expressed concern with school starting. Mr. Wallace said he would work to get a hard surface completed before school started. Mr. Henne asked if the main sewer hook up was completed. Mr. Wallace confirmed, yes.

- Mr. Novobielski gave report.

Councilmember Costello asked about dates in November for budgets. Mr. Henne said they would be November 16-18 but that a schedule would be sent out tomorrow.

2. Councilmembers

- Councilmember Wickenhagen – No report
- Councilmember Iverson – No report
- Councilmember Marquis – No report
- Councilmember Peterson – No report
- Councilmember Bell – No report
- Councilmember Costello – No report
- Councilmember Carlson – No report

3. City Attorney Report – no report, but requested Councilmembers schedule an appointment to discuss matters with Attorney when possible.

4. City Administrator Report - No report

5. Mayor Report – No report

6. Boards **None**

R. Executive Session **None**

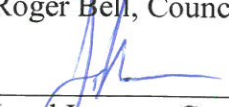
S. Adjournment

Councilmember Peterson moved to adjourn the meeting. Councilmember Bell seconded. By show of hands vote was unanimous. Meeting was adjourned.

The meeting adjourned at 6:43pm.



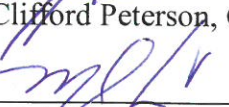
Roger Bell, Councilmember



Jared Iverson, Councilmember



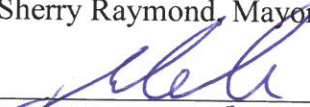
Clifford Peterson, Councilmember



Michael Costello, Councilmember



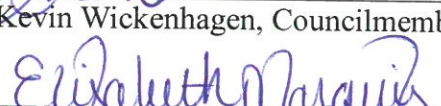
Sherry Raymond, Mayor



Russell Carlson, Councilmember



Kevin Wickenhagen, Councilmember



Elizabeth Marquis, Councilmember

ATTEST:



Dale E. Novobielski, Clerk/Treasurer



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/13/2022

Agenda Number: K-2

Action Item

Title: Approval of Claims and Payroll

From: Dale Novobielski, City Clerk/Treasurer

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: See claims and payroll registers

Funding Source: See claims and payroll registers

Background/Findings/Facts: N/A

Recommended Motion: I move to approve the Consent Agenda in the form presented (This item is part of the consent agenda).

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken: None**



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/13/2022

Agenda Number: N-1

Action Item

Title: Resolution Authorizing the Mayor to sign Task Order No. 2021-13 Addendum No.1 between the City of Selah and HLA Engineering and Land Surveying, Inc. for work on the Fremont Avenue Resurfacing Project

From: Rocky D. Wallace, Public Works Director

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: \$8,500.00

Funding Source: 111

Background/Findings/Facts: The Selah Fremont Avenue Resurfacing project has completed construction. The final construction cost is \$311,571.80, or \$17,353.20 below the Contract Amount. While it is great that the construction contract came in below budget, the construction engineering budget did not fare as well. Project construction hours were prolonged throughout the project due to subcontractors working longer hours than anticipated to complete the project within the time provided in the contract. This addendum includes additional construction engineering services to provide additional inspections and contract administration services resulting from the prolonged construction hours. TIB stated that they will pay 90% of the additional engineering costs. Since the construction came in well below budget, the City will not see an increase in cost compared to the original budget but a savings of \$8853.20 to the original budget. The terms are acceptable to City staff, and Public Works requests that the City Council authorize the Mayor to sign Task Order 2021-13 Addendum No. 1.

Recommended Motion: I move to approve the Resolution in the form presented.

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken:**

5/10/2022 Resolution No. 2917 Authorizing the Mayor to Sign a Two-Page Contract with Granite Construction Company for Work on the Fremont Avenue Resurfacing Project

- 12/14/2021 Resolution No. 2880 Authorizing the Mayor to Sign Task Order No. 2021-13 Between the City of Selah and HLA Engineering and Land Surveying, Inc., for the Fremont Avenue Resurfacing Project.
- 7/27/2021 Resolution No. 2860 authorizing the Mayor to sign a Transportation Improvement Board (TIB) Funding Application for the 2021 Arterial Preservation Program for the Fremont Avenue Resurfacing Project

RESOLUTION NO. 2943

RESOLUTION AUTHORIZING THE MAYOR TO SIGN TASK ORDER 2021-13
ADDENDUM NO. 1 BETWEEN THE CITY OF SELAH AND HLA ENGINEERING AND
LAND SURVEYING, INC. TO PROVIDE ENGINEERING SERVICES FOR WORK ON
THE FREMONT AVENUE RESURFACING PROJECT

WHEREAS, the City desires to add Engineering services to the Fremont Avenue Resurfacing project; and

WHEREAS, the City currently uses HLA Engineering and Land Surveying, Inc. for professional civil engineering and consulting work; and

WHEREAS, the City wishes to engage HLA via Task Order Addendum No. 1 for the Engineering services for the Fremont Avenue Resurfacing project; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor be authorized to sign Task Order No. 2021-13 Addendum No. 1 between the City of Selah and HLA Engineering and Land Surveying, Inc. for the Fremont Avenue Resurfacing project.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 13th day of September, 2022.

Sherry Raymond
Sherry Raymond, Mayor

ATTEST:

Dale E. Novobielski
Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

R.O.C.
Rob Case, City Attorney

From: [Stephen Hazzard](#)
To: [Wallace, Rocky](#)
Subject: Selah Fremont Resurfacing Contract Addendum
Date: Friday, August 26, 2022 9:13:50 AM
Attachments: [image001.jpg](#)
[2022-08-26 - 21249 - Selah Fremont Resurfacing Contract Amendment.pdf](#)

Rocky,

Attached is a copy of HLA's Contract Addendum for the Fremont Avenue Resurfacing project.

Reason for Addendum:

Project construction hours were prolonged throughout the project due to subcontractors working longer hours than anticipated in order to complete the project within the time provided in the contract.

Justification/Budget Discussion:

The Selah Fremont Avenue Resurfacing project has completed construction. The final construction cost is \$311,571.80, or \$17,353.20 below the Contract Amount. While it is great that the construction contract came in below budget, the construction engineering budget did not fair as well.

HLA proposes that the City review the attached Contract Addendum for \$8,500. TIB stated that they will pay 90% of the additional engineering costs and since the construction came in well below budget, the City will not see an increase in cost compared to the original budget.

Please let me know if you have any questions.

Thanks,



Stephen S. Hazzard, PE

HLA Engineering and Land Surveying, Inc.

2803 River Road Yakima, WA 98902

Office: 509-966-7000 | Cell: 509-840-4746

shazzard@hlacivil.com | www.hlacivil.com

From: [Beagle, Andrew \(TIB\)](#)
To: [Stephen Hazzard](#)
Cc: [Wallace, Rocky](#); [Chris Cuevas](#)
Subject: RE: Selah Fremont Avenue Resurfacing
Date: Thursday, August 25, 2022 3:11:47 PM
Attachments: [image001.jpg](#)

Stephen,

Apologies for not getting back to you earlier. Yes, on the final UCE you can put in for over engineering justification. We should talk about the justification prior to submitting the UCE. How close are you to completion, do you need me to send you the UCE form?

Regards,
Andrew

From: Stephen Hazzard <shazzard@hlacivil.com>
Sent: Monday, August 22, 2022 4:36 PM
To: Beagle, Andrew (TIB) <AndrewB@tib.wa.gov>
Cc: Wallace, Rocky <Rocky.Wallace@selahwa.gov>; Chris Cuevas <ccuevas@hlacivil.com>
Subject: RE: Selah Fremont Avenue Resurfacing

External Email

Thanks Andrew,

When I looked into placing the additional funds on the UCE, I was unable to generate the total because HLA's contract with Selah is currently overbudget. The system we use will not allow us to bill anything when a project is overbudget. I believe we need to create a contract supplement with the City and bill the City the overage and then seek the reimbursement through the UCE. What are your thoughts?

Thanks,



Stephen S. Hazzard, PE
HLA Engineering and Land Surveying, Inc.
2803 River Road Yakima, WA 98902
Office: 509-966-7000 | Cell: 509-840-4746
shazzard@hlacivil.com | www.hlacivil.com

From: Beagle, Andrew (TIB) <AndrewB@tib.wa.gov>
Sent: Monday, August 8, 2022 10:44 AM
To: Stephen Hazzard <shazzard@hlacivil.com>
Cc: Wallace, Rocky <Rocky.Wallace@selahwa.gov>; Chris Cuevas <ccuevas@hlacivil.com>
Subject: RE: Selah Fremont Avenue Resurfacing

Stephen,

I recommend putting in for this on the UCE by reflecting a smaller surplus, and putting the information below email text in the notes for justification of > 30% engineering. I will recommend approval to my managers, but can't give you a definitive approval until we process the closeout. Thanks for the heads up on this issue.

Attached is the closeout UCE for the project.

Regards,
Andrew

From: Stephen Hazzard <shazzard@hlacivil.com>
Sent: Friday, August 5, 2022 4:19 PM
To: Beagle, Andrew (TIB) <AndrewB@tib.wa.gov>
Cc: Wallace, Rocky <Rocky.Wallace@selahwa.gov>; Chris Cuevas <ccuevas@hlacivil.com>
Subject: Selah Fremont Avenue Resurfacing

External Email

Good Afternoon Andrew,

The Selah Fremont Avenue Resurfacing project has completed construction. The final construction cost is \$311,571.80, or \$12,353.20 below the Contract Amount shown on the Bid Opening UCE. While it is great that the construction contract came in below budget, the construction engineering budget did not fair as well. If it is ok with TIB, the City and HLA would like to use some of the savings in the contract amount to cover additional construction engineering costs (approximately \$8,500). Would TIB be able to provide 90% on this additional engineering?

The increase in construction engineering would keep the total engineering below the 30% construction threshold as required by TIB.

30% of \$311,571.80 =	\$93,471
Design Engineering =	-\$38,350
Constr. Engineering (Original) =	<u>-\$41,300</u>
Remaining to reach 30%	\$13,821

Please let me know if you have any questions. Have a great weekend.

Thanks,



Stephen S. Hazzard, PE
HLA Engineering and Land Surveying, Inc.
2803 River Road Yakima, WA 98902
Office: 509-966-7000 | Cell: 509-840-4746
shazzard@hlacivil.com | www.hlacivil.com

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HLA

Engineering and Land Surveying, Inc.

*** TRANSMITTAL ***

Date: August 26, 2022

Project No.: 21249E/C

To: City of Selah
222 S. Rushmore Road
Selah, WA 98942

Attention: Rocky Wallace
Public Works Director

From: Stephen S. Hazzard, PE

Re: Fremont Avenue Resurfacing
Task Order No. 2021-13 – Addendum No. 1

We are sending you the attached following items:

Two (2) Original Task Order Addendum Agreements

Comment:

Rocky:

Attached for your review and consideration are two (2) signed original Task Order No. 2021-13 - Addendum No. 1 agreements for the Fremont Avenue Resurfacing project.

Please execute the Agreements and return one signed original to our office.

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

Copy to: _____

Signed: _____

ADDENDUM NO. 1

TASK ORDER NO. 2021-13

REGARDING GENERAL AGREEMENT BETWEEN CITY OF SELAH

AND

HLA ENGINEERING AND LAND SURVEYING, INC. (HLA)

PROJECT DESCRIPTION:

Fremont Avenue Resurfacing

HLA Project No. 21249E/C

TIB Project No. 3-E-182 (006)-1

REASON FOR ADDENDUM NO. 1:

Project construction hours were prolonged throughout the project due to subcontractors working longer hours than anticipated to complete the project within the time provided in the contract. This addendum includes additional construction engineering services to provide additional inspection and contract administration services resulting from the prolonged construction hours.

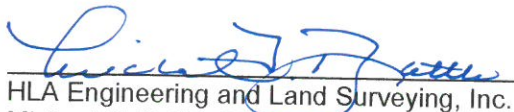
FEE FOR SERVICE:

Revise the Task Order No. 2021-13 fee for service to read:

2.0 Construction Engineering

All work shall be performed on a time-spent basis in accordance with Exhibit A – Schedule of Hourly Rates attached to the General Services Agreement, plus reimbursement for direct non salary expenses such as printing expenses, vehicle mileage, and outside consultants for an estimated fee of \$49,800.00. The estimated amount for Addendum No. 1 is \$8,500.00, and when added to the original Task Order No. 2021-13 of \$41,300.00, equals \$49,800.00.

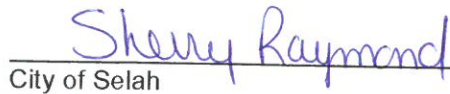
Proposed:



HLA Engineering and Land Surveying, Inc.
Michael T. Battle, PE, President

8/26/2022
Date

Approved:



City of Selah
Sherry Raymond, Mayor

9.15.22
Date



Selah City Council Regular Meeting **AGENDA ITEM SUMMARY**

Meeting Date: 9/13/2022

Agenda Number: N-2

Action Item

Title: A Resolution authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement for the Valleyview/South Third Street/Southern Avenue Improvements Project, contingent on approval by Yakima County.

From: Rocky D Wallace, Public Works Director

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: \$35,800.00

Funding Source: 111

Background/Findings/Facts: After selecting HLA and contracting for design services (PE phase), the City planned to later enter into supplemental agreements with HLA for CN phase services. Since supplementing a Lump Sum Local Agency A&E Consultant Agreement is not allowed per the Local Agency Guidelines (LAG) manual, the City is proposing to enter into a new LACA (negotiated hourly rate) with HLA using the sole source process. The City requested WSDOT approve a sole source agreement since it had been the City's intent for all phases of work to be completed by HLA since contract execution in 2013. WSDOT has approved the sole source agreement and it is included in this packet. The dollar amount is the same as previously approved by Council in Supplemental Agreement No. 3 on 4/23/2019.

Recommended Motion: I move to approve the Resolution in the form presented

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken:**

8/23/2022 Resolution No. 2942 Authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency Supplement No. 3, to Obligate Construction Funding for the Valleyview/South Third Street/Southern Avenue Improvements Project.

- 8/23/2022 Resolution No. 2941 Authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency Federal Aid Project Prospectus, to Obligate Construction Funding for the Valleyview/South Third Street/Southern Avenue Improvements Project.
- 12/14/2021 Resolution No. 2889 Authorizing the City Administrator to Sign the Approved Administrative Offer Summaries (AOS) for the Valleyview Ave, South Third Street, and Southern Avenue Improvement Projects
- 12/14/2021 Resolution No. 2888 Authorizing the Mayor to Sign a Washington State Transportation Improvement (TIB) Fuel Tax Grant Agreement P-E-182(P03)-1 For Valleyview Avenue, Third Street and Southern Avenue Improvements
- 11/23/2021 Resolution No. 2878 Authorizing the Mayor to Sign Task Order No. 2021-12 Between the City of Selah and HLA Engineering and Land Surveying, Inc., for Engineering and Surveying Services for the Valleyview Ave., South Third Street, Southern Avenue Sewer Improvement Project
- 7/27/2021 Resolution No.2861 Authorizing the Mayor to sign a Transportation Improvement Board (TIB) Funding Application for the 2021 Arterial Preservation Program for the Fremont Avenue Resurfacing Project
- 4/23/2019 Resolution No. 2733 Authorizing the Mayor to sign a Supplemental Agreement Number 3 with HLA Engineering and Land Surveying Inc. for Consultant Services for the Valleyview Ave. /Third St. /Southern Avenue improvement Project
- 4/23/2019 Resolution No. 2732 Authorizing the Mayor to sign the Washington State Department of Transportation (WSDOT) Local Agency Agreement Supplement Number 1 for the Valleyview/South Third Street/Southern Avenue Improvements Project
- 8/11/2015 Resolution No. 2479 Authorizing the Mayor to sign a letter to confirm continuing commitment to Project Match for the Valleyview Avenue/South Third Street/Southern Avenue Project's Right of Way and Construction phases.
- 12/10/2013 Resolution No. 2359 Authorizing the Mayor to Sign an Agreement for Certified Acceptance Services with Yakima County, Washington - STP Paving Project on Valleyview Avenue/South Third Street/Southern Avenue/South First Street
- 12/10/2013 Resolution No. 2356 Authorizing the Mayor to Sign a Local Agency Standard Consulting Agreement for Professional Municipal Engineering Services with Huibregtse, Louman Associates, Inc. for the Valleyview Avenue/South Third Street/Southern Ave/South First Street
- 7/9/2013 Resolution No. 2323 Adopting the Amended Six-Year Transportation Improvement Program for the Years 2013-2018 to Reflect the Funding Status Change to Secure the Purchase of a Clean Air Compliant Street Sweeper and Funding of the Valleyview Avenue to South Third

- 6/13/2013 Resolution No. 2319 Authorizing the Mayor to sign the Washington State Department of Transportation (WSDOT) Local Agency Federal Aid Project Prospectus for the Valleyview Avenue/South Third Street/Southern Avenue Road Improvements Project
- 6/13/2013 Resolution No. 2318 Authorizing the Mayor to sign the Washington State Department of Transportation (WSDOT) Local Agency Agreement for the Valleyview Avenue/South Third Street/Southern Avenue Road Improvements Project
- 1/22/2013 Resolution No. 2289 Authorizing the Mayor to Sign the 2013 Surface Transportation Program (STP) Funding Application for the South Selah Loop Improvement Project
- 1/8/2013 Council Study Session

RESOLUTION NO. 2944

Resolution authorizing the Mayor to sign a Washington State Department of Transportation (WSDOT) Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement for the Valleyview Avenue/South Third Street/Southern Avenue Road Improvements Project

WHEREAS, The City of Selah wishes to reconstruct Valleyview Avenue/ South Third Street/ Southern Avenue Road; and

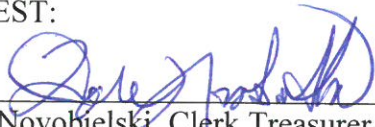
WHEREAS, the City currently uses HLA Engineering and Land Surveying, Inc. for professional engineering and consultant work; and


WHEREAS, the City wishes to engage HLA via a WSDOT Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement for the Valleyview Avenue/South Third Street/Southern Avenue Road Improvements Project

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor be authorized to sign the WSDOT Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement for the Valleyview Avenue/South Third Street/Southern Avenue Improvements project, contingent on approval by Yakima County.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 13th day of September 2022.

ATTEST:


Dale Novobielski, Clerk Treasurer


Sherry Raymond, Mayor

APPROVED AS TO FORM:


Rob Case, City Attorney

From: [Stephen Hazzard](#)
To: brad.schilperoort@co.yakima.wa.us; [Brett Sheffield](#)
Cc: [Wallace, Rocky](#)
Subject: Selah - Valleyview, Third, Southern - New Design Consultant Agreement
Date: Wednesday, September 7, 2022 9:53:58 AM
Attachments: [image001.jpg](#)
[13125A - Valleyview, S. Third, Southern, S. First - LACA - CA Review.pdf](#)
[4709001 sole source.pdf](#)
[Third Street MOU.docx](#)

Brad and Brett,

Attached for your review is the new design consultant agreement and approved sole source documents for the Selah Valleyview, Third and Southern project. Also attached for the background information is the memorandum of understanding regarding this situation.

Thanks,



Stephen S. Hazzard, PE

HLA Engineering and Land Surveying, Inc.

2803 River Road Yakima, WA 98902

Office: 509-966-7000 | Cell: 509-840-4746

shazzard@hlacivil.com | www.hlacivil.com

MEMORANDUM OF UNDERSTANDING

Between the City of Selah and HLA Engineering and Land Surveying, Inc.

Regarding

Request for Sole Source Consultant Services

Parties:

City of Selah
115 West Naches Avenue
Selah, WA 98942

HLA Engineering and Land Surveying, Inc.
2803 River Road
Yakima, WA 98902

Background:

In 2013, the City of Selah (City) received funding through the Surface Transportation Program (STP) for the Valleyview Avenue/South Third Street/Southern Avenue Improvements project. The City advertised for consultant services to perform preliminary engineering (PE), right of way (ROW), and construction (CN) phase services associated with the project. After receiving and reviewing statements of qualifications submitted by consultants, the City selected HLA Engineering and Land Surveying, Inc. (HLA), formerly Huibregtse, Louman Associates, Inc. In December 2013, the City entered into a Lump Sum Local Agency A&E Consultant Agreement (LACA) with HLA for PE phase services in the amount of \$220,000.00.

Initially, the City anticipated the project would be constructed in 2015; however STP funds were delayed and would not become available until FY 2022. Since the funding was delayed for a significant period of time, three supplements to the lump sum agreement were executed. Supplement 1 (executed April 2015) and Supplement 2 (executed November 2016) extended the end date of the agreement. Supplement 3 (executed April 2019) extended the end date of the agreement and increased the contract amount by \$35,337.00. The supplemented funds became available to YVCOG through the Highway Infrastructure Program (HIP). All supplements to the original lump sum agreement (1, 2, and 3) were reviewed and approved by the Certification Agency (CA) and WSDOT Local Programs. However, per recent guidance from WSDOT, lump sum contracts are not allowed to be supplemented. This guidance makes the HIP funding ineligible for use under the current lump sum contract.

After selecting HLA and contracting for design services (PE phase), the City planned to later enter into supplemental agreements with HLA for CN phase services. Since supplementing a Lump Sum Local Agency A&E Consultant Agreement is not allowed per the Local Agency Guidelines (LAG) manual, the City is proposing to enter into a new LACA (negotiated hourly rate) with HLA using the sole source process. The City requested WSDOT approve a sole source agreement since it had been the City's intent for all phases of work to be completed by HLA since contract execution in 2013.

This Memorandum of Understanding summarizes actions to be completed by the City following approval of the sole source agreement.

Understanding:

After the Request for Sole Source Consultant Services is approved, the City of Selah and HLA agree to the following:

- Supplements 1 – 3 will only extend the end date of the existing lump sum agreement and any costs above the original agreement amount of \$220,000.00 are ineligible for reimbursement by federal funds.
- The new agreement amount for completion of PE phase services will be the sum of the remaining STP funding amount (funds not expended under the current lump sum agreement) and the previously supplemented HIP funding amount (\$35,337.00). The HIP funds will be eligible for federal reimbursement under the new agreement.
- The City and HLA will establish an agreeable end date to terminate the existing lump sum LACA prior to obligation of the next phase of work.
- At the date identified for execution of the new Negotiated Hourly Rate (NHR) LACA, HLA will submit a final billing related to the Lump Sum LACA.
- As an hourly contract, the City will be allowed to supplement the new agreement for CN phase services after funding for each phase is obligated.
- Remaining funds from the PE phase will roll into the CN phase of the project

The undersigned acknowledges the agreements within this Memorandum of Understanding.

City of Selah

HLA Engineering and Land Surveying, Inc

Sherry Raymond
Mayor

Michael T. Battle, PE
President

Date

Date

Request for Sole Source Consultant Services

Checklist for Submitting a Request for Sole Source Consulting Services

**(Adapted in part from a WSDOT Memorandum:
Request for Consultant Services, A&E Services Project Specific Sole Source)**

The following checklist must be provided with requests to use sole source consultant services, rather than competitive bid procedures, on a project:

Agency: City of Selah

Date: August 5, 2022

Project Title: Valleyview Avenue/South Third Street/Southern Avenue Improvements

Federal-Aid Number: STPUS-4709(001)

1. Checklist for a Supplement to an Existing Agreement

Description of the Existing Project:

Initials	Date or N/A	Checklist Items for a Supplement to an Existing Agreement
	8/25/2013 9/1/2013	Date the project was originally advertised.
	12/10/2013	Date the original Agreement was executed.
	6/30/2015	Completion date of the original Agreement.
		Total dollar amount of the original Agreement. \$220,000.00
	4/14/2015	Date Supplemental Agreement Number 1 was executed.
	12/31/2016	Completion date of Supplemental Agreement Number 1.
		Total dollar amount of Supplemental Agreement Number 1. \$220,000.00 (No Change)
		Describe the reason(s) for Supplemental Agreement Number 1. The previous agreement was set to expire due to delay of programmed funding for the project. This supplement extended the contract completion date. The scope of work and payment amount remained unchanged.
	11/22/2016	Date Supplemental Agreement Number 2 was executed.
	12/31/2020	Completion date of Supplemental Agreement Number 2.
		Total dollar amount of Supplemental Agreement Number 2. \$220,000.00 (No Change)
		Describe the reason(s) for Supplemental Agreement Number 2. The previous agreement was set to expire due to delay of programmed federal

		funding for the project. This supplement extended the contract completion date. The scope of work and payment amount remained unchanged.
	04/23/2019	Date Supplemental Agreement Number 3 was executed.
	12/31/2023	Completion date of Supplemental Agreement Number 3.
		Total dollar amount of Supplemental Agreement Number 3. \$255,337.00 (\$35,337.00 Increase)
		<p>Describe the reason(s) for Supplemental Agreement Number 3.</p> <p>The previous agreement was set to expire due to delay of programmed funding for the project. This supplement extended the contract completion date. The scope of work did not change, but the preliminary engineering phase increased by \$35,337.00 to account for inflation of costs since the project was originally anticipated to be designed in 2013.</p> <p>Per recent guidance from WSDOT Local Program, the supplemented \$35,337.00 will be considered ineligible for federal reimbursement under the current agreement since supplementing a lump sum agreement is not allowed. Supplement #3 is only approved to extend the date of the agreement and any costs above the original agreement amount of \$220,000.00 are ineligible for reimbursement by federal funds.</p>

(Note: Using an electronic form of this checklist, provide the above information for each existing Supplemental Agreement, numbering the Supplements sequentially.)

2. Checklist for Both a New Agreement and Supplement to an Existing Agreement

Initials	Date or N/A	Checklist Items – New and Supplements to Agreements
	N/A	<p>Describe the proposed project for the Sole Source Agreement:</p> <p>The Valleyview Avenue/South Third Street/Southern Avenue/South First Street Improvements project involves reconstruction of the roadway, adding curb and gutter, storm drainage improvements, sanitary sewer improvements, sidewalk, and illumination. The original advertisement for the project included Preliminary Engineering (PE), Right of Way (ROW), and Construction (CN) phase.</p> <p>The proposed sole source agreement is for the remaining PE and CN phase.</p> <p>Currently, HLA Engineering and Land Surveying, Inc. (HLA) is approximately 80% complete with design, which began in 2013. Final design is anticipated to be complete by Fall 2022. The design will require the City obtain right of way to accommodate improvements. HLA has prepared ROW plans and obligated ROW funding to facilitate the acquisition of property from 14 parcels. During the CN phase, construction management and administration services would be provided.</p>
	N/A	<p>State the specific intended purpose of the Agreement and describe the services and/or deliverables that are needed: (Note: If two or more phases of work are anticipated, describe each phase separately.)</p>

		<p>The City of Selah (City) is seeking a sole source agreement with HLA to perform the remaining Preliminary Engineering and Construction phase services. If approved, the City will terminate the existing lump sum contract with HLA and enter into the correct type of local agency consultant agreement (negotiated hourly rate or cost plus fixed fee).</p> <p><u>Services performed under the new agreement will include:</u></p> <p><u>Preliminary Engineering (PE) Phase</u></p> <p>HLA has been performing design engineering services on the project since 2013. Currently, the design plans are approximately 80% complete. The current contract includes final design plans, completion of specifications, NEPA, and SEPA. The PE phase would be completed concurrently with the ROW phase under this proposed sole source agreement.</p> <p>The consultant agreement for the remaining PE phase will not utilize a lump sum agreement.</p> <p><u>Right of Way (ROW) Phase</u></p> <p>The ROW funding was obligated in Spring 2021. HLA has been coordinating with Yakima County to complete the ROW phase; currently, the appraisals are in processing. Services during the ROW phase are anticipated to include: ROW project management, property valuation, including administrative offer summaries and appraisal/appraisal review, property rights acquisition and negotiation, title examination and clearance, and ROW certification.</p> <p>The ROW phase would be completed concurrently with the PE phase under this proposed sole source agreement. Work with Yakima County will be completed under an existing interlocal agreement.</p> <p><u>Construction (CN) Phase</u></p> <p>Services would include: providing field survey and construction staking, review submittals to meet design criteria, answer design related requests for information (RFI), facilitate and attend construction meetings, furnish a qualified resident engineer (inspector) to observe construction, daily inspector reports, weekly statement of working days, recommend monthly progress payments, prepare and submit proposed change orders, monitor the contractor's compliance with federal and state labor standards, conduct final inspection and prepare punchlist, prepare record drawings, and assist the local agency with STP funding reimbursements and closeouts.</p> <p>The consultant agreement for the CN phase will not utilize a lump sum agreement.</p>
	8/5/2022	Date that the sole source consulting services are desired.
	N/A	Describe the funding sources of the project (including participation

		<p>percentages):</p> <p><u>Preliminary Engineering (PE) Phase</u> Duration of work/phase 1 of work: duration to complete the remaining PE phase is approximately 3 months (August 2022 – October 2022).</p> <p>Total Federal Funding (86.5%): \$220,867 Total Local Funding (13.5%): \$34,470 Total PE Funding: \$255,337 Total STPUS PE Funding Remaining (<i>of original contract</i>): \$11,000.00 Total HIP PE Funding Remaining: \$35,337</p> <p><u>Right of Way (ROW) Phase</u> Duration of work/phase 2 of work: duration to complete the remaining ROW is expected to be approximately 2 months (August 2022 – September 2022). Of this funding, approximately \$150,000 is expected to be used by a consultant and ROW agency (Yakima County), with the remainder to be used on property acquisition.</p> <p>Total Federal Funding (86.5%): \$171,014.00 Total Local Funding (13.5%): \$26,690.00 Total ROW Funding: \$197,704.00</p> <p><u>Construction (CN) Phase</u> Duration of work/phase 3 of work: proposed CN is currently estimated to be 6 months (March 2023 – August 2023). It is anticipated the project would have construction complete in August 2023, but closeout may extend to approximately December 2023.</p> <p>Total Federal Funding (86.5%): \$262,009 Total Local Funding (13.5%): \$40,891 Total CN Funding (Consultant CN funding): \$302,900</p>
	N/A	<p>Provide the estimated cost of the services that will be performed by the sole source consultant:</p> <p>\$46,337 (remaining PE + HIP Funds) + \$302,900 (CN) = \$349,237</p>
	N/A	<p>Provide the estimated cost of services to be provided by a subconsultant:</p> <p>ROW Phase = \$150,000 (Yakima County)</p>
		<p>Describe the work to be performed by a subconsultant:</p> <p>Yakima County is contracted to perform ROW services under an interlocal agreement with the City.</p> <ul style="list-style-type: none"> • Ensure appraisals are consistent and in compliance with state and federal laws, regulation, and policies and procedures.

		<ul style="list-style-type: none"> • Prepare Administrative Offer Summaries (AOS or Appraisal Waiver) • Ensure acquisitions are completed in compliance with federal and state laws, regulations, and policies and procedures. • Coordinate with engineering, program administration, appraisal, and/or property management as necessary. • Procure right of way (ROW) certification.
	N/A	<p>Provide justification for the use of sole source consultant services (i.e., how it was determined that competitive procurement is not appropriate for this project) by giving an explanation to the items listed below:</p> <p>The City published advertisements for PE, ROW, and CN collectively and subsequently selected HLA for all phases of the project(s). The City entered into a Lump Sum Local Agency Consultant Agreement (LACA) for the PE phase with the intent of later entering into a supplemental LACA for ROW and CN services. Since supplementing a lump sum agreement is not allowable, the City seeks to forego the time consuming and expensive process of advertising, selecting a consultant, and negotiating new contracts when the intent of the original advertisement was to select a single consultant to complete all phases of the project.</p> <p>HLA has been the prime consultant assisting the City with the project since 2013. Documents, such as the ROW plans, have been prepared as part of the PE phase, and ROW funding has been obligated assuming CN phase would also be completed with HLA assistance.</p>
	N/A	<p>Describe the unique nature of the services and/or the unique qualifications, abilities or expertise of the consultant to meet the agency's needs (e.g., describe how they are highly specialized or one-of-a-kind, include other factors which may be considered, such as what is their past performance, cost effectiveness [learning curve], and /or the follow-up nature of the required services):</p> <p>If the City prepared a request for qualifications, advertised for services, selected a consultant, and spent time bringing a new consultant up to speed with the project, there would be delay and increase costs to the project since significant effort has already gone into preparing ROW plans, researching affected parcels, and coordinating with entities and involved utilities.</p> <p>The project is programed to be constructed in 2023.</p>
	N/A	<p>Describe other special circumstances which may be relevant, such as confidential investigations, copyright restrictions or time constraints. If time constraints are applicable, identify when the agency was on notice of the need for the services and the entity that imposed the constraints, explain the authority (if not obvious) of the entity to impose them, and provide the timelines within which the work must be accomplished.</p> <p>At the time of original contract execution, informal policies allowed supplementing lump sum contracts with consultants. Currently, this practice is not allowable per the LAG manual. Future contracts are anticipated to be different types of Local Agency Consultant Agreements.</p>

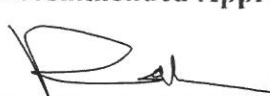
		<p>This issue was only recently recognized and Selah is working to address the issue immediately by coordinating with WSDOT to determine the appropriate path forward.</p> <p>The project is anticipated to be constructed in 2023. Delay in procuring a sole source agreement may delay completion of the ROW phase and delay the project construction into another season.</p>
	N/A	<p>Describe the availability of consultants in the location required (e.g., if the proposed consultant is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected):</p> <p>HLA performs municipal engineering services for the City and has been the engineer on this project since contracts were executed in December 2013. Due to the duration and design stage of the project, there are no other consultants who could step in and complete the project in an efficient and cost-effective manner.</p>
	N/A	<p>Disadvantaged Business Enterprise (DBE) goals may apply on a federally funded project. Explain reason(s) for waiving DBE participation goals:</p> <p>This request is not seeking to waive the DBE participation goal.</p>

Agency


Signature of Agency Official

8/26/2022
Date

Recommended Approval


Randall S. Giles
2022.08.26 13:35:43
-07'00'
Region Local Programs Engineer

8/26/22
Date

Approval

Local Programs

September 02, 2022
Date

Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement

Agreement Number: 13125A

Firm/Organization Legal Name (do not use dba's): HLA Engineering and Land Surveying, Inc.	
Address 2803 River Road, Yakima, WA 98902	Federal Aid Number STPUS-HIP-4709(001)
UBI Number 600517737	Federal TIN 91-1237188
Execution Date 9-15-2022	Completion Date 12/31/2026
1099 Form Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Federal Participation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Project Title Valleyview Avenue/S. Third Street/Southern Avenue/S. First Street	
Description of Work Engineering services for the reconstruction and widening of the roadways, construct sidewalks, curb and gutter, and storm drainage improvements.	
<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No DBE Participation <input type="checkbox"/> No MBE Participation <input type="checkbox"/> No WBE Participation <input type="checkbox"/> No SBE Participation
Maximum Amount Payable: 35,800.00	

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on page one (1) of this AGREEMENT, between the City of Selah, hereinafter called the "AGENCY," and the "Firm / Organization Name" referenced on page one (1) of this AGREEMENT, hereinafter called the "CONSULTANT."

WHEREAS, the AGENCY desires to accomplish the work referenced in "Description of Work" on page one (1) of this AGREEMENT and hereafter called the "SERVICES;" and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days' notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26, shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is, a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY's "DBE Program Participation Plan" and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absence of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C – Preparation and Delivery of Electronic Engineering and other Data."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring, as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:

Name: Rocky Wallace
Agency: City of Selah
Address: 222 S. Rushmore Road
City: Selah State: WA Zip: 98942
Email: Rocky.Wallace@selahwa.gov
Phone: 509-698-7368
Facsimile:

If to CONSULTANT:

Name: Michael T. Battle, PE
Agency: HLA Engineering and Land Surveying, Inc.
Address: 2803 River Road
City: Yakima State: WA Zip: 98902
Email: mbattle@hlacivil.com
Phone: 509-966-7000
Facsimile:

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall conform to the criteria agreed upon detailed in the AGREEMENT documents. These SERVICES must be completed by the date shown in the heading of this AGREEMENT titled "Completion Date."

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov).

- A. Hourly Rates: Hourly rates are comprised of the following elements - Direct (Raw) Labor, Indirect Cost Rate, and Fee (Profit). The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibits "D" and "E" attached hereto and by reference made part of this AGREEMENT. These negotiated hourly rates will be accepted based on a review of the CONSULTANT's direct labor rates and indirect cost rate computations and agreed upon fee. The accepted negotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. The initially accepted negotiated rates shall be applicable from the approval date, as memorialized in a final written acknowledgment, to 180 days following the CONSULTANT's fiscal year end (FYE) date.

The direct (raw) labor rates and classifications, as shown on Exhibits "D" and "E" shall be subject to renegotiations for each subsequent twelve (12) month period (180 days following FYE date to 180 days following FYE date) upon written request of the CONSULTANT or the AGENCY. The written request must be made to the other party within ninety (90) days following the CONSULTANT's FYE date. If no such written request is made, the current direct (raw) labor rates and classifications as shown on Exhibits "D" and "E" will remain in effect for the twelve (12) month period.

Conversely, if a timely request is made in the manner set forth above, the parties will commence negotiations to determine the new direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period. Any agreed to renegotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. If requested, the CONSULTANT shall provide current payroll register and classifications to aid in negotiations. If the parties cannot reach an agreement on the direct (raw) labor rates and classifications, the AGENCY shall perform an audit of the CONSULTANT's books and records to determine the CONSULTANT's actual costs. The audit findings will establish the direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period.

The fee as identified in Exhibits "D" and "E" shall represent a value to be applied throughout the life of the AGREEMENT.

The CONSULTANT shall submit annually to the AGENCY an updated indirect cost rate within 180 days of the close of its fiscal year. An approved updated indirect cost rate shall be included in the current fiscal year rate under this AGREEMENT, even if/when other components of the hourly rate are not renegotiated. These rates will be applicable for the twelve (12) month period. At the AGENCY's option, a provisional and/or conditional indirect cost rate may be negotiated. This provisional or conditional indirect rate shall remain in effect until the updated indirect cost rate is completed and approved. Indirect cost rate costs incurred during the provisional or conditional period will not be adjusted. The CONSULTANT may request an extension of the last approved indirect cost rate for the twelve (12) month period. These requests for provisional indirect cost rate and/or extension will be considered on a case-by-case basis, and if granted, will be memorialized in a final written acknowledgment.

The CONSULTANT shall maintain and have accessible support data for verification of the components of the hourly rates, i.e., direct (raw) labor, indirect cost rate, and fee (profit) percentage. The CONSULTANT shall bill each employee's actual classification, and actual salary plus indirect cost rate plus fee.

- A. **Direct Non-Salary Costs:** Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of sub-consultants. Air or train travel will be reimbursed only to lowest price available, unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and all revisions thereto. Air, train, and rental card costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-salary Costs shall include an itemized listing of the charges directly identifiable with these SERVICES. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the SERVICES provided under this AGREEMENT.
- B. **Maximum Amount Payable:** The Maximum Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.) The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- C. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in A and B above. Detailed statements shall support the monthly billings for hours expended at the rates established in Exhibit "D," including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.
- D. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents, which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. Per WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings

E. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed. An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and /or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgment between the parties

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

Agreement Number:

VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973 (23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973 (29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- American with Disabilities Act of 1990 (42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason, that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee.

The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY.

Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT

to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and /or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY's, their agents', officers and employees' failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The Parties have mutually negotiated this waiver.

Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: Rocky Wallace
Agency: City of Selah
Address: 222 S. Rushmore Road
City: Selah State: WA Zip: 98942
Email: Rocky.Wallace@selahwa.gov
Phone: 509-698-7368
Facsimile:

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V "Payment Provisions" until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment," hereafter referred to as "CLAIM," under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI "Disputes" clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the Agency

Attached hereto as Exhibit "G-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "G-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "G-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "G-4" Certificate of Current Cost or Pricing Data. Exhibit "G-3" is required only in AGREEMENTS over one hundred thousand dollars (\$100,000.00) and Exhibit "G-4" is required only in AGREEMENTS over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III "General Requirements" prior to its performance of any SERVICES under this AGREEMENT.

XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state, or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, STATE and AGENCY security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained, and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information, which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT, or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain, and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim, or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim, or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENTs, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbles, recordings, visual displays, photographs, minutes of meetings, tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops, or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified

The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

Sherry Raymond
Signature

9/15/22
Date

[Signature]
Signature

9/6/2022
Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

Exhibit A ***Scope of Work***

See attached Exhibit A.

Project No. 13125A

Exhibit A

**HLA Engineering and Land Surveying, Inc.
Scope of Work**

**Valleyview Avenue, Third Street, and Southern Avenue (PROJECT)
Project No. 13125A**

Item 1. Project Management and Funding Administration

1. Provide monthly status reports and invoices for work performed.
2. Prepare and coordinate project schedule in conjunction with funding requirements and timelines.
3. Maintain project files for agency review.
4. Perform quality assurance and quality control reviews at each of the design submittals.

Item 2. 100% Design – Final Engineering Design, Plans, Estimate, and Specifications

1. Based on approved 90% design plans, perform the final design.
2. Prepare 100% design plans.
3. Prepare 100% Engineer's opinion of construction cost.
4. Prepare 100% project bid documents, contracts, specifications, and special provisions.
5. Request final utility repair/relocation plans from impacted utility companies, as applicable.
6. Transmit 100% design plans, Engineer's opinion of construction cost, and specifications to the City for review and approval.

Item 3. Bidding Phase Assistance

1. Prepare advertisement for bids and transmit to selected newspaper(s).
2. Answer and supply such information as requested by prospective bidders.
3. Prepare and issue addenda to contract documents, if necessary.
4. Assist City in bid opening and evaluation process.
5. Prepare summary of bids received and review bidder's qualifications and responsiveness.
6. Coordinate with WSDOT for award approval.
7. Make recommendation of construction contract award to the City.

Assumptions:

1. City to pay for all associated advertising fees.

Exhibit B

DBE Participation Plan

In the absents of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

See attached DBE Participation Plan

Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

Topographic survey performed by HLA Engineering and Land Surveying, Inc. on file at Engineer's office and will be available to transmit to the City in AutoCAD Civil 3D format as requested.

B. Roadway Design Files

AutoCAD Civil 3D. On file at Engineer's office and will be available to transmit to the City in AutoCAD Civil 3D format as requested.

C. Computer Aided Drafting Files

AutoCAD Civil 3D on file at Engineer's office and will be available to transmit to the City as requested.

D. Specify the Agency's Right to Review Product with the Consultant

Agency will review product at any point in time. Plans will be transmitted to the City at 100%.

E. Specify the Electronic Deliverables to Be Provided to the Agency

Contract documents. Agency may also request any electronic data files associated with the project.

F. Specify What Agency Furnished Services and Information Is to Be Provided

A. Provide full information as to CITY requirements of the work items.

B. Assist consultant by placing at their disposal all available information pertinent to the site of the work items, including previous reports, drawings, plats, surveys, utility records, and any other data relative to design and construction.

C. Examine all studies, reports, sketches, estimates, specifications, drawings proposals, and other documents presented by HLA, and render in writing decisions pertaining thereto within a reasonable time so as not to delay work of HLA.

D. Obtain approval of all governmental authorities having jurisdiction over the work items, approvals, and consents from other individuals or bodies as may be necessary for completion. Pay all review fees and costs associated with obtaining approvals.

E. CITY staff shall be the liaison with adjacent business owners, residents, and private utilities, including any coordination communication, reviews, and approvals.

F. Pay for project advertisement costs.

II. Any Other Electronic Files to Be Provided

On file at Engineer's office.

III. Methods to Electronically Exchange Data

Microsoft OneDrive administered through the Engineer's office, or other FTP site software.

A. Agency Software Suite

Microsoft products. Adobe.

B. Electronic Messaging System

Microsoft Exchange and Outlook.

C. File Transfers Format

.docx, .xlsx, .pdf, and .dwg

Exhibit D

Prime Consultant Cost Computations

See attached Exhibit D.

EXHIBIT D
SCHEDULE OF RATES
FOR

HLA Engineering and Land Surveying, Inc.

Effective January 1, 2022, through December 31, 2022

Senior Principal Engineer	\$235.00 per hour
Licensed Principal Land Surveyor	\$215.00 per hour
Licensed Principal Engineer	\$210.00 per hour
Licensed Professional Engineer	\$189.00 per hour
Other Licensed Professional	\$189.00 per hour
Project Engineer II	\$173.00 per hour
Licensed Professional Land Surveyor	\$170.00 per hour
Project Engineer I	\$155.00 per hour
Contract Administrator III	\$142.00 per hour
Senior Planner	\$140.00 per hour
CAD Technician	\$136.00 per hour
Engineering Technician III	\$128.00 per hour
Resident Engineer	\$128.00 per hour
Surveyor	\$126.00 per hour
Surveyor on Two Man Crew	\$120.00 per hour
Contract Administrator II	\$118.00 per hour
Engineering Technician II	\$110.00 per hour
Surveyor on Three Man Crew	\$105.00 per hour
Contract Administrator I	\$91.00 per hour
Engineering Technician I	\$91.00 per hour
Administrative/Clerical	\$91.00 per hour
Vehicle Mileage	Federal Rate

EXHIBIT D
SCHEDULE OF RATES
FOR

HLA Engineering and Land Surveying, Inc.

Effective January 1, 2023, through December 31, 2023

Senior Principal Engineer	\$245.00 per hour
Licensed Principal Land Surveyor	\$220.00 per hour
Licensed Principal Engineer	\$218.00 per hour
Licensed Professional Engineer	\$198.00 per hour
Other Licensed Professional	\$196.00 per hour
Project Engineer II	\$180.00 per hour
Licensed Professional Land Surveyor	\$175.00 per hour
Project Engineer I	\$161.00 per hour
Contract Administrator III	\$147.00 per hour
Senior Planner	\$145.00 per hour
CAD Technician	\$141.00 per hour
Engineering Technician III	\$133.00 per hour
Resident Engineer	\$133.00 per hour
Surveyor	\$128.00 per hour
Contract Administrator II	\$122.00 per hour
Surveyor on Two Man Crew	\$122.00 per hour
Surveyor on Three Man Crew	\$108.00 per hour
Engineering Technician II	\$114.00 per hour
Contract Administrator I	\$95.00 per hour
Engineering Technician I	\$95.00 per hour
Administrative/Clerical	\$95.00 per hour
Vehicle Mileage	Federal Rate

Exhibit E

Sub-consultant Cost Computations

If no sub-consultant participation listed at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI "Sub-Contracting" of this AGREEMENT.

N/A

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, ***(Federal Highway Administration)***, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. ***[Include Washington State Department of Transportation specific program requirements.]***
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. ***[Include Washington State Department of Transportation specific program requirements.]***
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the ***(Federal Highway Administration)*** to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the ***(Federal Highway Administration)***, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the ***(Federal Highway Administration)*** may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the ***(Federal Highway Administration)*** may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Exhibit G

Certification Document

- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of Agency Official
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions
- ~~Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying~~
- ~~Exhibit G-4 Certificate of Current Cost or Pricing Data~~

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of
HLA Engineering and Land Surveying, Inc.

whose address is

2803 River Road, Yakima, WA 98902


and that neither the above firm nor I have

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the City of Selah, WA
and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

HLA Engineering and Land Surveying, Inc.

Consultant (Firm Name)


Signature (Authorized Official of Consultant)

9/6/2022
Date

Exhibit G-1(b) Certification of Agency Official

I hereby certify that I am the:

☒ Agency Official

☐ Other

of the City of Selah, and HLA Engineering and Land Surveying, Inc.

or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Sherry Raymond
Signature


9-15-22
Date

Exhibit G-2 Certification Regarding Debarment Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; an
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this proposal.

HLA Engineering and Land Surveying, Inc.

Consultant (Firm Name)


Signature (Authorized Official of Consultant)

9/6/2022
Date

~~Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying~~

~~The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:~~

- ~~1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.~~
- ~~2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.~~

~~This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00 for each such failure.~~

~~The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.~~

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Exhibit G-4 Certification of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____. **.

This certification includes the cost or pricing data supporting any advance AGREEMENT's and forward pricing rate AGREEMENT's between the offer or and the Government that are part of the proposal.

Firm: _____

Signature

Title

Date of Execution _____ ***.

*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)

**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.

***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Exhibit H **Liability Insurance Increase**

To Be Used Only If Insurance Requirements Are Increased

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to \$ _____.

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$ _____.

Such insurance coverage shall be evidenced by one of the following methods:

- ~~Certificate of Insurance~~
- ~~Self-insurance through an irrevocable Letter of Credit from a qualified financial institution~~

~~Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.~~

~~Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.~~

~~If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.~~

Notes: Cost of added insurance requirements: \$ _____.

- ~~Include all costs, fee increase, premiums.~~
- ~~This cost shall not be billed against an FHWA funded project.~~
- ~~For final contracts, include this exhibit~~

Exhibit I

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant has alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include all decisions and descriptions of work, photographs, records of labor, materials, and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Step 5 Forward Documents to Local Programs

For federally funded projects, all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Exhibit J

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) total a \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associate with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit



Selah City Council

Regular Meeting

AGENDA ITEM SUMMARY

Meeting Date: 9/13/2022

Agenda Number: O-1

Action Item

Title: Ordinance Adding a New Chapter 8.77 to the Selah Municipal Code, Entitled “Wheeled All-Terrain Vehicles (WATVs) on Public Roadways”

From: Dan Christman, Chief of Police; Rob Case, City Attorney

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: N/A

Funding Source: N/A

Background/Findings/Facts: Over the past several months, the City Council has received public input and publicly deliberated as to whether to authorize the use of side-by-sides on City streets. Chief Christman presented a draft Ordinance, modeled after other municipalities’ ordinances. A majority of the City Council publicly indicated that it desired for a final draft to be presented to the City Council for final consideration. City Attorney Rob Case has reworked Chief Christman’s prior draft, mostly to change formatting, organization and to add some clarifying language. The only significant substantive differences between the version now presented and that previously presented are: (a) the requirement of wearing a motorcycle helmet has been removed; (b) the prohibition on pulling a trailer has been removed; and (c) the list/map of City streets where side-by-sides can be operated has been removed, and general language explaining where they can be operated has been added.

Recommended Motion: I move to approve the Ordinance in the form presented.

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date:	Action Taken:
5/24/2022	Council Discussion under Old Business
8/9/2022	Council Discussion under Old Business

ORDINANCE NO. 2170

ORDINANCE ADDING A NEW CHAPTER 8.77 TO THE SELAH MUNICIPAL CODE,
ENTITLED "WHEELED ALL-TERRAIN VEHICLES (WATVs) ON PUBLIC ROADWAYS"

WHEREAS, state law – specifically RCW Chapter 46.09 – allows a city to authorize the operation of wheeled all-terrain vehicles (WATVs) on public roadways within their respective jurisdictions; and

WHEREAS, the City Council desires to approve – subject to certain limitations, conditions and requirements – the operation of WATVs on most public roadways within the City that have a posted speed limit of thirty-five (35) miles per hour or less, and to specify certain public roadways within the City where the operation of WATVs shall continue to be prohibited irrespective of the posted speed limit;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON,
ORDAINS AS FOLLOWS:

Section 1. That a new Chapter 8.77 of the Selah Municipal Code entitled "Wheeled All-Terrain Vehicles (WATVs) on Public Roadways" is hereby adopted and shall provide as follows:

Chapter 8.77

WHEELED ALL-TERRAIN VEHICLES (WATVs) ON PUBLIC ROADWAYS

Sections:

- 8.77.010 Definitions.
- 8.77.020 Operation of wheeled all-terrain vehicles on certain public roadways approved.
- 8.77.030 Necessity of vehicle registration, driver's license and liability insurance.
- 8.77.040 Minimum equipment requirements for wheeled all-terrain vehicles when operated on public roadways.
- 8.77.050 Duty to obey traffic control devices and rules of the road.
- 8.77.060 Prohibited uses.
- 8.77.070 Prohibited areas (including all state highways).
- 8.77.080 Use by governmental agencies.
- 8.77.090 Violation – Penalty.

8.77.010 Definitions.

Unless otherwise specifically provided for in this SMC Chapter, the definitions set forth in RCW Chapter 46.09, as existing or hereafter amended, shall be applicable to this SMC Chapter. In addition, when used in this SMC Chapter, the following words, terms and phrases shall have the following meanings:

“City” means the City of Selah, Washington.

“Motorcycle helmet” has the same meaning as provided in RCW 46.37.530.

“Public roadway” means every street, road, boulevard, lane and every way or place within the City’s boundaries that is open as a matter of right to public vehicular traffic.

“Rules of the road” means all laws, regulations and rules that apply to vehicle or pedestrian traffic as established by state statutes and regulations, including RCW Chapter 46.61, and also as established by the SMC.

“Sidewalk” means the publicly-owned or privately-owned area existing between the curb line or lateral line of a public roadway and the adjacent property that is designated or intended for use by pedestrians, or the publicly-owned or privately-owned area that is either generally parallel to or otherwise in proximity to a public roadway that is used by pedestrians.

“Wheeled All-Terrain Vehicle” is frequently abbreviated within this SMC Chapter as “WATV” (singular) or “WATVs” (plural), and means: A utility-type vehicle designed for all-terrain use on land that has four or more inflated tires, has a maximum width less than seventy-four (74) inches, that has a wheelbase length of one-hundred ten (110) inches or less, that has a maximum weight less than two thousand (2,000) pounds, and that also satisfies at least one of the following:

- (a) Has a minimum width of fifty (50) inches; or
- (b) Has a minimum weight of at least nine hundred (900) pounds; or
- (c) Has a wheelbase length of over sixty-one (61) inches; or
- (d) Has a steering wheel for steering control; or
- (e) Has non-straddle seating with the operator and passenger sitting side by side in the vehicle.

8.77.020 Operation of wheeled all-terrain vehicles on certain public roadways approved.

Subject to the restrictions set forth in RCW Chapter 46.09 and SMC section 8.77.030, any person, 18 years of age or older, possessing a valid (non-intermediate or unrestricted) driver’s license issued by the state of the person’s residence may operate a WATV upon public roadways

within the City that have a posted speed limit of thirty-five (35) miles per hour or less, except for those specific public roadways identified in SMC 8.77.080 where the operation of WATVs shall continue to be prohibited irrespective of the posted speed limit.

8.77.030 Necessity of vehicle registration, driver's license and liability insurance.

(a) Prior to operating a WATV on public roadway, the WATV must comply with all applicable registration requirements of RCW Chapter 46.09.

(b) An operator of WATV on a public roadway must possess and carry proof of a valid (non-intermediate or unrestricted) driver's license issued by the state of the operator's residence.

(c) An operator of WATV on a public roadway must possess and carry proof of current liability insurance in compliance with, and with overage limits at least equivalent to the amounts set forth in, RCW Chapter 46.29.

8.77.040 Minimum equipment requirements for wheeled all-terrain vehicles when operated on public roadways.

WATVs operated on public roadways must satisfy the following minimum equipment requirements and such equipment must be utilized as required by law and as specified herein:

(a) At least two headlights meeting the requirements of RCW 46.37.030 and .040, which must be continually activated (*i.e.*, turned on) at all times when the vehicle is in operation irrespective of daylight or darkness conditions.

(b) At least one tail lamp meeting the requirements of RCW 46.37.525, which must be continually activated (*i.e.*, turned on) at all times when the vehicle is in operation irrespective of daylight or darkness conditions; however, a utility-type vehicle, as described in RCW 46.09.310(19), must have at least two tail lamps meeting the requirements of RCW 46.37.070(1), which must be continually activated (*i.e.*, turned on) at all times when the vehicle is in operation irrespective of daylight or darkness conditions.

(c) At least one stop lamp meeting the requirements of RCW 46.37.200, which is in good working order and which activates (*i.e.*, turns on) when the operator applies the brakes of the WATV.

(d) Reflectors meeting the requirements of RCW 46.37.060.

(e) Turn signals:

(1) During hours of darkness as defined in RCW 46.04.200, turn signals meeting which meet the requirements of such RCW provision, which are in good working order and which activate (*i.e.*, turn on) when the operator activates them.

(2) Outside of hours of darkness as defined in RCW 46.04.200, the operator of the WATV must comply with RCW 46.37.200 or .310 with regard to turn signals.

(f) At least two mirrors meeting the requirements of RCW 46.37.400.

(g) A windshield meeting the requirements of RCW 46.37.430, unless the operator the WATV wears glasses, goggles or a face shield, which conforms to the standards established by the Washington State Patrol.

(h) A horn or warning device meeting the requirements of RCW 46.37.380, which is in good working order and which activates (*i.e.*, sounds) when the operated activates it.

(i) Brakes in working order, which activate when activated by the operator.

(j) A spark arrester and muffling device, which meet the requirements of RCW 46.09.470.

(k) Seat belts meeting the requirements of RCW 46.37.510, which must be worn by each occupant of the WATV unless an occupant is wearing a motorcycle helmet pursuant to SMC 8.77.030(a).

(l) Individual seats for each occupant designed to seat a person, with no more than one person occupying any seat.

8.77.050 Duty to obey traffic control devices and rules of the road.

(a) An operator of a WATV on a public roadway must obey all rules of the road that apply to vehicle or pedestrian traffic and must obey the instructions of official traffic control signals, signs and other control devices applicable to vehicles. An operator of a WATV on a public roadway is subject to all duties imposed by RCW Chapter 46.61 applicable to operators of a vehicle, except those provisions if any which by their nature are not logically applicable to WATVs.

(b) WATVs, and the use thereof upon public roadways, are subject to the applicable towing and impoundment regulations and requirements set forth in RCW Chapter 46.55.

8.77.060 Prohibited uses.

(a) No person shall operate a WATV or ride in a WATV on a public roadway in a negligent or unsafe manner, and all operators and passengers must continuously exercise reasonable regard for their own safety and for the safety of others at all times.

(b) No person shall operate a WATV on a public roadway immediately adjacent to (*i.e.*, next to or beside) another WATV or any motorcycle within a single lane of traffic.

(c) No person shall occupy a WATV on a public roadway unless that person is seated in a seat designed to carry more than one person.

(d) No person shall ride as a passenger in a WATV on a public roadway unless that person is seated in a seat designed to carry no more than one person.

(e) No person shall operate a WATV on a public roadway in violation of any rule, regulation, standard or requirement of this SMC Chapter.

(f) Any person who operates or rides as a passenger in a WATV must wear a securely fastened motorcycle helmet while the WATV is in motion, unless the WATV is equipped with seat belts and roll bars or an enclosed passenger compartment.

(g) No person shall tow any trailers, devices, equipment or persons behind the WATV.

8.77.070 Prohibited areas (including all state highways).

(a) It is unlawful to operate a WATV on a sidewalk.

(b) It is unlawful to operate a WATV in a park, except in a designated parking lot, driveway or lane designated for vehicular traffic.

(c) It is unlawful to operate a WATV on any pedestrian trail, bicycle path or bridge, where the operation of motorized vehicles is prohibited.

(d) A person may not operate a WATV on a public roadway that has a posted speed limit in excess of thirty-five (35) miles per hour; however, a person may cross a public roadway that has a posted a speed limit in excess of thirty-five (35) miles per hour if the crossing occurs at a controlled intersection, if the crossing begins and ends on a public roadway that has a posted speed limit of thirty-five (35) miles per hour or less, and if the operator adheres to all rules of the road when making the crossing.

(e) No person may operate a WATV on a public roadway or segment thereof that is designated as a state highway. As of the date of original enactment of this SMC Chapter in September of 2022, the following public roadway segments are designated as state highways and thus no WATV may be operated thereon (except when crossing, as specified in SMC 8.77.070(d)):

(1) State Route 823: From the 700 block of South First Street to Jim Clements Way.

(2) South First Street: From the 700 block of South First Street to Valleyview Avenue.

(3) Jim Clements Way: From South First Street to South Wenas Avenue.

(4) South Wenas Avenue: From Jim Clements Way to North Wenas Road.

(5) North Wenas Road: From South Wenas Avenue to the 1000 block of North Wenas Road.

8.77.080 Use by governmental agencies.

A person or entity may operate a WATV on a public roadway under the authority or direction of a governmental agency that engages in emergency management as defined in RCW 46.09.310, or search and rescue as defined in RCW 38.52.010, or a law enforcement agency as defined in RCW 16.51.011, within the scope of the agency's official duties.

8.77.090 Violation – Penalty.

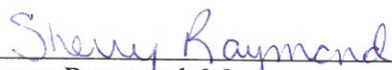
Any person or entity who violates a provision of this SMC Chapter is guilty of a traffic infraction and will be punished by the imposition of a monetary penalty as authorized by RCW 46.09.490, as existing or hereafter amended; provided, that conduct that constitutes a criminal traffic offense may be charged as such and is subject to the maximum penalties allowed for such offenses.

[End of language of new SMC Chapter]

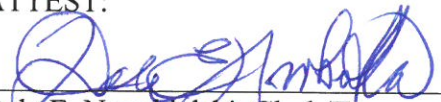
Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Effective Date and Summary Publication. This Ordinance shall take effect and be in full force and effect five days after its summary publication by Ordinance title only, in the City's official newspaper.


PASSED by the City Council of the City of Selah this 13th day of September, 2022.


Sherry Raymond, Mayor

ATTEST:


Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:


Rob Case, City Attorney

DATE: SEPT 13, 2022

DATE: SEPT 13, 2022

[illegible]

COUNCIL ROLL CALL LIST

Meeting Date: 9-13-2022

Here	ATTENDANCE	Abs.
✓	Kevin Wickenhagen	
✓	Jared Iverson	
✓	Elizabeth Marquis	
✓	Clifford Peterson	
✓	Roger Bell	
✓	Michael Costello	
✓	Russell Carlson	

YES	AIS:	NO
	Kevin Wickenhagen	
	Jared Iverson	
	Elizabeth Marquis	
	Clifford Peterson	
	Roger Bell	
	Michael Costello	
	Russell Carlson	

PASS

YES	AIS: 0-1	NO
✓	Kevin Wickenhagen	
✓	Jared Iverson	
✓	Elizabeth Marquis	
✓	Clifford Peterson	
✓	Roger Bell	
✓	Michael Costello	
	Russell Carlson	✓

YES	AIS:	NO
	Kevin Wickenhagen	
	Jared Iverson	
	Elizabeth Marquis	
	Clifford Peterson	
	Roger Bell	
	Michael Costello	
	Russell Carlson	

PASS

SUB 1 =

YES	AIS: 0-1	NO
✓	Kevin Wickenhagen 1	
✓	Jared Iverson	
✓	Elizabeth Marquis	
✓	Clifford Peterson	
	Roger Bell	✓
✓	Michael Costello 2	
	Russell Carlson	✓

YES	AIS:	NO
	Kevin Wickenhagen	
	Jared Iverson	
	Elizabeth Marquis	
	Clifford Peterson	
	Roger Bell	
	Michael Costello	
	Russell Carlson	

PASS

SUB 2 -

YES	AIS: 0-1	NO
✓	Kevin Wickenhagen	
✓	Jared Iverson	
✓	Elizabeth Marquis	
	Clifford Peterson	✓
	Roger Bell	✓
✓	Michael Costello 1	
✓	Russell Carlson 2	

YES	AIS:	NO
	Kevin Wickenhagen	
	Jared Iverson	
	Elizabeth Marquis	
	Clifford Peterson	
	Roger Bell	
	Michael Costello	
	Russell Carlson	

YES	AIS:	NO
	Kevin Wickenhagen	
	Jared Iverson	
	Elizabeth Marquis	
	Clifford Peterson	
	Roger Bell	
	Michael Costello	
	Russell Carlson	

YES	AIS:	NO
	Kevin Wickenhagen	
	Jared Iverson	
	Elizabeth Marquis	
	Clifford Peterson	
	Roger Bell	
	Michael Costello	
	Russell Carlson	

MULTI-YEAR COMPARISON OF SALES TAX

	<u>2022</u>	<u>2021</u>	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>
Jan	\$151,199	\$133,820	\$120,983	\$88,980	\$93,184	\$91,395	\$82,673	\$92,800	\$81,150
Feb	172,120	153,522	135,017	123,981	107,216	123,449	101,535	97,039	95,065
Mar	134,968	134,158	117,092	90,893	85,665	78,697	72,861	84,568	96,405
Apr	128,202	137,804	111,737	94,224	84,249	73,335	78,478	83,045	88,667
May	156,276	175,724	127,359	117,652	111,266	103,802	87,367	91,790	113,073
Jun	163,981	166,574	122,385	124,139	107,435	114,374	94,188	86,718	113,755
Jul	155,221	159,617	154,876	124,885	105,487	105,749	98,589	86,544	119,343
Aug	192,230	169,820	161,028	143,320	116,807	125,935	107,734	98,297	129,473
Sep		151,316	151,986	122,118	112,248	108,334	102,510	103,999	109,509
Oct		169,134	135,818	119,639	115,049	97,406	94,565	88,686	110,883
Nov		175,198	140,822	131,801	106,072	101,959	101,730	94,386	106,077
Dec		165,654	139,360	129,278	120,662	101,067	102,473	96,216	98,182
	\$1,254,197	\$1,892,342	\$1,618,464	\$1,410,910	\$1,265,341	\$1,225,502	\$1,124,704	\$1,104,089	\$1,261,583

Budget \$1,500,000

+/-

2021 \$182,775

Prior Years

2012	\$845,250
2011	\$864,116
2010	798,593
2009	785,879
2008	787,328
2007	777,708
2006	645,857
2005	636,286
2004	629,052
2003	601,343
2002	530,571