

ORDINANCE #445

AN ORDINANCE RELATING TO TITLE 23, U.S. CODE HIGHWAYS REGULATIONS, POLICIES, AND PROCEDURES FOR THE WEST YACOLT ROAD NORTH AMBOY AVENUE PROJECT.

WHEREAS: The Town Council of Yacolt, Washington, is in regular session this 3<sup>rd</sup> day of April, 2006; and

WHEREAS: All members of the Town Council have had notice of time, place, and purpose of said meeting; and

WHEREAS: The Town Council is of the opinion that it would be in the best interest for the Town to adopt this Ordinance; and

NOW THEREFORE: BE IT ORDAINED BY THE TOWN COUNCIL OF YACOLT, WASHINGTON, as follows:

The Town of Yacolt accepts and will comply with the applicable provisions set forth below for the West Yacolt Road North Amboy Avenue Project.

**SECTION I: SCOPE OF WORK**

The Town shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work".

When the State acts for and on behalf of the Town, the State shall be deemed an agent of the Town and shall perform the services described and indicated in "Type of Work" on the face of the Local Agency Agreement, in accordance with plans and specifications as proposed by the Town and approved by the State and the Federal Highway Administration.

**SECTION II: DELEGATION OF AUTHORITY**

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Town agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Town in all matters concerning the project as requested by the Town. If the Town advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

### **SECTION III: PROJECT ADMINISTRATION**

Certain types of work and services shall be provided by the State on this project as requested by the Town and described in the "Type of Work". In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Town advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

### **SECTION IV: AVAILABILITY OF RECORDS**

All project records in support of all costs incurred and actual expenditures kept by the Town are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Town. Copies of said records shall be furnished to the State and/or Federal Government upon request.

### **SECTION V: COMPLIANCE WITH PROVISIONS**

The Town shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

In the event that right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Town will repay to the State the sum or sums of federal funds paid to the Town under the terms of this agreement (see Section IX).

The Town agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Town agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

## **SECTION VI: PAYMENT AND PARTIAL REIMBURSEMENT**

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Town and by the Federal Government. Federal funding shall be in accordance with the Transportation Equity Act for the 21<sup>st</sup> Century (TEA 21), as amended, and Office of Management and Budget circulars A-102, A-87 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Town shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Town shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The Town shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Town for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless an indirect cost plan has been approved by WSDOT.

The State will pay for State incurred costs on the project. Following payment the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Town for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

### **1. Project Construction Costs**

Project construction financing will be accomplished by Method C as detailed below.

Method C – The Town may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Town for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

## **SECTION VII. AUDIT OF FEDERAL CONSULTANT CONTRACTS**

The Town, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Town's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States: WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-133.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Town shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

#### **SECTION VIII. SINGLE AUDIT ACT**

The Town, as a sub recipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A sub recipient who expends \$500,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Town shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

#### **SECTION IX. PAYMENT OF BILLING**

The Town agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Town has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Town from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Assistant Secretary for Highways and Local Programs.

#### **SECTION X. TRAFFIC CONTROL, SIGNING, MARKING, AND ROADWAY MAINTENANCE**

The Town will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Town will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Town will, at its own expense, maintain the improvement covered by this agreement.

## **SECTION XI. INDEMNITY**

The Town shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Town, State, or Federal Government, arising from the Town's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Town to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

## **SECTION XII. NONDISCRIMINATION PROVISION**

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Town shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR part 26. The Town shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Town of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Town hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Town further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Town also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.

- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Town agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Town under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Town; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

### **SECTION XIII. LIQUIDATED DAMAGES**

The Town hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Town from reduction of federal participation in accordance with this paragraph.

### **SECTION XIV. TERMINATION FOR PUBLIC CONVENIENCE**

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.

- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary determines that such termination is in the best interests of the State.

#### **SECTION XV. VENUE FOR CLAIMS AND/OR CAUSES OF ACTION**

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Town has against the State of Washington, growing out of this contract or the project with which it is concerned shall be brought only in the Superior Court for Thurston County.

#### **SECTION XVI. CERTIFICATION REGARDING THE RESTRICTIONS OF THE USE OF FEDERAL FUNDS FOR LOBBYING**

The approving authority certifies, 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 an 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 any 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 the Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub grants, and contracts and subcontracts under grants, sub grants, loans, and cooperative agreements) which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

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 as 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 require certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ie Ordinance shall take effect immediately upon adoption and publication according to law.

Passed by the Town Council of the Town of Yacolt, Washington on this 6<sup>th</sup> day of September, 2005.


AYES Holyk, Weldon, Stewart

NAYS None

ABSENT Marbut

MAYOR  ATTEST 

I hereby certify that this is a true and correct copy of Ordinance #445 as read before the Council and passed on the date herein mentioned and passed according to law.

ATTEST   
Brenda Finnegan, Clerk/Treasurer