

RESOLUTION 2014 - 30

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, APPROVING  
LEASE AGREEMENT WITH THE PORT OF SUNNYSIDE  
FOR AWOS EQUIPMENT STORAGE  
(Sunnyside Municipal Airport- AWOS Project)**



**WHEREAS**, the Port of Sunnyside, hereinafter referred to as the "Port", and the City of Sunnyside, hereinafter referred to as the "City"; and

**WHEREAS**, the City owns and operates the Sunnyside Municipal Airport and has constructed an Automated Weather Observation System (AWOS) at said location; and

**WHEREAS**, the City desires to locate within the Port's office, certain electronic equipment in an enclosed container to support the operation of the AWOS system; and

**WHEREAS**, the City and the Port have negotiated an Equipment Space Lease for this portion of property in the amount of \$150.00 per month; and

**WHEREAS**, the City Council finds and determines that approval of such Lease Agreement is in the best interest of the residents of the City, and will promote the general health, safety and welfare.

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

**SECTION 1.** That the "Equipment Space Lease", a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby accepted and approved; and the City Manager is hereby authorized to accept such offer and to execute and administer such agreement for and on behalf of the City of Sunnyside.

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

**PASSED** this 28<sup>th</sup> day of April, 2014.



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JAMES A. RESTUCCI, MAYOR

**ATTEST:**



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DELILAH SAENZ, CMC, CITY CLERK

**APPROVED AS TO FORM:**



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KERR LAW GROUP, PLLC  
Attorneys for the City of Sunnyside

**EQUIPMENT SPACE LEASE**

**PARTIES:**

**LANDLORD:**

PORT OF SUNNYSIDE  
A Washington Municipal Corporation  
Post Office Box 329  
Sunnyside, Washington 98944

**TENANT:**

CITY OF SUNNYSIDE  
A Washington Municipal Corporation  
818 East Edison Avenue  
Sunnyside, Washington 98944

**EFFECTIVE DATE:** April \_\_\_\_, 2014

**RECITALS:**

A. Landlord is the owner of real property consisting of a building (the "Facility") commonly known as 2640 East Edison, Suite 1, Sunnyside, Washington 98944), and described as:

Lot C of Short Plat recorded under Auditor's File No. 7250291; situated in Yakima County, Washington

The Facility is located within what is commonly known as "*Golob Landing*".

B. Tenant owns and operates the Sunnyside Airport east of the Golob Landing, and has established an Automated Weather Observing Station ("AWOS") adjacent to the runway located upon an easement previously granted by Landlord to Tenant.

C. Tenant desires to locate within Landlord's office, certain electronic equipment in an enclosed container to support Tenant's AWOS.

**FOR AND IN CONSIDERATION** of the mutual promises, covenants and conditions set forth herein, the parties agree as follows:

1. **Equipment Space Lease:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord space for housing the electronic equipment for the AWOS. The location shall be selected by Landlord. Tenant shall have access to the equipment by making request to Landlord. The equipment space is located in the office of Landlord, and the access to the space shall only be for purposes of installing, maintaining and removing the equipment. The office shall be primarily used by Landlord.

2. **Indefinite Term:** This Lease shall be for an indefinite term, which may be terminated by Tenant at any time, by giving notice to Landlord, and may be terminated by Landlord upon giving six months advance notice to Tenant.

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3. **Net Rent:** The rent payable to the Landlord shall be the amount of \$150.00 per month *including* utilities. All rental shall be payable in advance on the first day of each month, and shall be invoiced by Landlord. All rent shall be payable to the Landlord at the address set forth herein, or at such other place as the Landlord may designate in writing. If the Tenant does not pay the rent within thirty (30) days of the invoice by Landlord, then in addition to the over-due rent, the Tenant shall pay, as additional rent, a late fee of \$50.00 and shall pay interest on the rental payment at the rate Of 12% Per Annum From The Date Due Until The Date Paid.
4. **Lease Surety Bond:** Landlord hereby waives the requirement for a surety bond.
5. **Use Of Property By Tenant:** The Property is leased to Tenant for equipment storage, and no other activity shall be conducted without the prior written consent of Landlord. Tenant shall not use or permit the Premises or any part thereof to be used in violation of any federal, state, county or municipal law, rule, regulation or ordinance.
6. **Acceptance of Property:** Tenant acknowledges that Tenant has inspected the Property prior to the signing of this Lease and is satisfied with the condition of the Property and accepts the Property in its present condition "AS IS", WITHOUT WARRANTIES OF ANY KIND OR NATURE.
7. **Maintenance And Repair:** Tenant shall be exclusively responsible for maintenance of its equipment and to pay for any installation or removal expenses or maintenance of the Facility due to the space use.
8. **Taxes And Assessments:** Landlord shall pay all taxes, assessments and charges associated with the Property, including, without limitation, special assessments or storm water charges, all of which shall be paid timely, as the same become due and payable. Tenant shall be responsible for establishing its exemption from Leasehold excise tax, or, in the alternative, shall be responsible for such tax.
9. **Indemnification, Liability Insurance:**
  - 9.1. Landlord shall not be liable for any injury to any person, or for any loss of or damage to any property (including property of Tenant) occurring in or about the Property from any cause whatsoever, except for such as arise out of Landlord's gross negligence or greater fault. Tenant shall indemnify, defend and save Landlord, its officers, agents, employees and contractors harmless from all loss, damage, liability or expense (including attorneys' fees and other costs incurred in conjunction with litigation defense of claims, whether claims involve litigation) resulting from any actual loss of or damage to the Property, arising out of Tenant's operation or occupation of the Property or caused by or resulting from any act or omission of Tenant or Tenant's licensee, assignee, subtenant or concessionaire, or of any officer, agent, employee, guest, invitee or visitors of any such person in or about the Property. The scope of Tenant's indemnification duties include, without limitation any claims of employees of Tenant against Landlord, and to the limited extent necessary to effectuate this indemnity provision, Tenant waives immunity under the Worker's Compensation Act (RCW Title 51); provided, that Tenant's waiver of immunity by the such provisions shall extend only to claims against the Landlord by employees of Tenant and shall not include or extend to any claims by Tenant's employees directly against Tenant. The indemnification provided for in this paragraph with respect to any acts or omissions during the term of this Lease shall survive any termination or expiration of this Lease. Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Property.

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9.2. Tenant shall, at its own expense, maintain comprehensive general liability insurance, with broad form endorsement, in effect with respect to the Property with a combined single limit of bodily injury and property damage of \$1,000,000, to indemnify Tenant against claims, demands, losses, damages, liabilities and expenses. Landlord shall be named as an additional insured and shall be furnished with a certificate of such policy or policies of insurance which shall bear an endorsement that the same shall not be canceled without thirty (30) days prior written notice to Landlord. If Tenant fails to maintain such insurance, Landlord may do so, and Tenant shall reimburse Landlord for the full expense incurred upon demand.

10. **Waiver Of Subrogation:** Landlord and Tenant hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this paragraph shall be inapplicable to the extent that it would have the effect of invalidating any insurance coverage of Landlord or Tenant. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

11. **Prohibition Of ASSIGNMENT OR Sublease:** Tenant is prohibited from assigning or subleasing the this Lease or the space.

12. **Inspection:** The Landlord reserved the right to inspect the Property at any and all reasonable times throughout the term of this Lease, provided that it shall not interfere unduly with Tenant's operations. The right of inspection reserved to the Landlord shall impose no obligation on the Landlord to make inspections to ascertain the condition of the Property and shall impose no liability upon the Landlord for failure to make such inspections.

13. **Default:**

13.1. If Tenant violates or breaches any of the covenants, agreements, stipulations or conditions herein, and such violation or breach shall continue for a period of sixty (60) days after written notice of such violation or breach, then Landlord may, at its option, declare this lease forfeited and the term hereof ended.

13.2. In the event of any entry in, or taking possession of, the Property, Landlord shall have the right, but not the obligation, to remove from the Property all personal property located therein, and may store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more, with the proceeds of such sale to be applied to the cost of such sale and to the payment of charges for storage, and to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof.

14. **General Provisions:**

14.1. **Notices:** Notices under this Agreement shall be in writing and may be delivered (1) personally; (2) by U.S. mail, certified or registered; or (3) by a nationally recognized overnight courier service. Mailed notices shall be deemed effective on the third day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown above. Couriers notices shall be deemed delivered when the courier's records indicate that delivery has occurred. Either party may change its address for notices by written notice to the other.

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14.2. **Attorney's Fees:** In the event of any dispute arising out of or relating to this Agreement whether suit or other proceeding is commenced or not, and whether in mediation, arbitration, at trial, on appeal, in administrative proceedings or in bankruptcy (including without limitation any adversary proceeding or contested matter in any bankruptcy case), the prevailing party shall be entitled to its costs and expenses incurred, including reasonable attorney's fees.

14.3. **Documents:** Each party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement to carry out its provisions.

14.4. **Interpretation and Fair Construction of Contract:** This Agreement has been reviewed and approved by each of the parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for nor against either party.

14.5. **Waiver of Breach:** The failure of any party hereto to insist upon strict performance of any of the covenants and agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, shall not be construed to be a waiver or relinquishment of any such option or right, or of any other covenants or agreement, but the same shall be and remain in full force and effect.

14.6. **Entire Agreement:** This Agreement (and any attached exhibits) contains the entire and final agreement and understanding of the parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. Any and all prior discussions, negotiations, commitments and understandings relating to the subject matter hereof are modified herein. There are no conditions precedent to the effectiveness of this Agreement other than as stated herein, and there are no related collateral agreements existing between the parties that are not referenced herein.

14.7. **Amendments:** Neither this Agreement nor any term or provision hereof, may be changed, waived, discharged, amended, modified or terminated orally, or in any manner other than by an instrument in writing signed by all of the parties hereto.

14.8. **Law:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Washington, irrespective of the fact that any one of the parties is now or may become a resident of a different state. Venue for any action under this Agreement shall lie in Yakima County, Washington.

14.9. **Parties and Successors:** Subject to the limitations on assignment provided in this Agreement, this Agreement shall inure to the benefit of, and be binding upon the parties, their successors and assigns.

14.10. **Time of Essence:** Time is of the essence of each and every provision of this Agreement.

14.11. **Legal and Tax Implications:** This Agreement affects your legal rights and obligations and will have tax implications. If you have any questions regarding this Agreement and any addendums, attachments or other related documents, you should consult an attorney or tax advisor.

14.12. **Counterparts/Facsimile:** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute

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one and the same Agreement. Facsimile transmissions of any signed original document, and re-transmissions of any signed facsimile transmissions, shall be the same as delivery of an original.

15. **Invalidity Of Particular Provisions:**

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

**LANDLORD:**

**TENANT:**

PORT OF SUNNYSIDE

CITY OF SUNNYSIDE

By: \_\_\_\_\_  
JAY HESTER  
Executive Director

By: \_\_\_\_\_  
DONALD D. DAY  
City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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State of Washington )  
 )ss  
County of Yakima )

This is to certify that on this \_\_\_\_ day of April, 2014, personally appeared before me **JAY HESTER**, the **Executive Director** of the **PORT OF SUNNYSIDE** the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington.

My appointment expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF YAKIMA )

This is to certify that on this \_\_\_\_ day of April, 2014, personally appeared before me **DONALD D. DAY**, the **City Manager of the CITY OF SUNNYSIDE**, the corporation that executed the within instrument, and acknowledged the same instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that he was authorized to execute the same and that the seal affixed, if any, is the corporate seal of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington.

My appointment expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name