

RESOLUTION 2012 - 42



**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
AGREEMENT WITH YAKIMA COUNTY
FOR CERTAIN INFRASTRUCTURE IMPROVEMENTS
(AWOS III SYSTEM – SIED Contract No. YC AI 12)**

WHEREAS, the City of Sunnyside is developing a project upon the property of the Sunnyside Municipal Airport which project includes the installation of an Air Weather Observation System (AWOS) III System (the “Project”); and

WHEREAS, the City of Sunnyside, has submitted an application for funding of the Project through the Supporting Investments in Economic Diversification (SIED) program maintained and offered by Yakima County; and

WHEREAS, the application for such funding has been approved in the total amount of \$50,000 from the SIED Fund, of which \$25,000 is in the form of a grant, and \$25,000 is in the form of a loan; and

WHEREAS, Yakima County and the City of Sunnyside have negotiated an Agreement for the administration of such grant and loan funds as set forth in SIED Contract No. YC AI 12, a copy of which is attached hereto and incorporated herein as Exhibit “A” by this reference; and

WHEREAS, upon approval of such Contract by the City Council, the Contract will be forwarded to the Board of Commissioners for Yakima County for approval and setting of applicable interest rate for repayment of the loan proceeds; and

WHEREAS, the City Council finds and determines that approval of such Contract is in the best interests of residents of the City of Sunnyside, and will promote the general health, safety and welfare.

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

Section 1. That "SIED Contract No. YC AI 12," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved; and the Interim City Manager is hereby authorized to execute and administer such agreement for and on behalf of the City of Sunnyside.

Section 2. That the Interim City Manager is hereby authorized to submit such approved Contract to the Board of County Commissioners of Yakima County for consideration, approval and execution.

Section 3. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 11th day of June, 2012.



MIKE FARMER, MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



MENKE JACKSON BEYER EHLIS HARPER & PLANT, LLP
Attorneys for the City of Sunnyside

**YAKIMA COUNTY
And the
City of Sunnyside
(Airport Infrastructure)**

I. PARTIES

This Supporting Investments in Economic Diversification (hereinafter referred to as SIED) Contract is made by and between Yakima County (hereinafter referred to as **the County**) whose address is 128 North Second Street, County Courthouse, Room 102, Yakima, Washington 98901, and **the City of Sunnyside** (hereinafter referred to as **the City**) whose address is 8181 E. Edison, Sunnyside, Washington 98944. Notices between the parties shall be made where and as provided for on Page 7, Section XXIII, NOTICES.

II. TERM

This Contract takes effect upon execution hereof by the authorized representatives of both parties and continues in effect until all payments required under Section V, MUTUAL CONSIDERATION, Subsection B. REPAYMENT OF COUNTY LOAN, have been made or until terminated as provided for in Section VIII, SUSPENSION, TERMINATION, AND CLOSEOUT, provided, the County's right under Section V, MUTUAL CONSIDERATION, Subsection D. OWNERSHIP AND USE, to use the Project shall continue so long as the Project remains in use.

III. PURPOSE

The purpose of this Contract is to provide for the construction of certain infrastructure improvements (hereinafter referred to as **the Project**) using certain County funds designated for such infrastructure. SIED funds will be used to augment an FAA grant secured to install an Air Weather Observation System (AWOS) III system for the airport. Current weather sensors are located in Yakima and Pasco. The Lower Yakima Valley's unique geographical and climatic position generates periods of low cloud cover and isolated thunder and lightning storms. These conditions can be present in the lower valley without being seen in either Yakima or the Tri-Cities. The AWOS III system will provide thorough and accurate local flight condition data for pilots utilizing the Sunnyside Municipal Airport for medical emergency transports and other business travel, along with more accurate weather monitoring information for better informed crop management decisions.

IV. RECITALS

The Parties make this Contract based on and in recognition of certain relevant facts and

EXHIBIT "A"

circumstances including:

- A. Sales and use taxes are collected in and for the County under authority of RCW 82.14.370 and Yakima County Code 3.10.010 for the purpose of financing public facilities in the County, and the proceeds are deposited in the Yakima County Infrastructure Fund (also referred to as SIED Fund), according to YCC 3.10.040.
- B. The City proposes to construct the Project with a combination of City, private, and County funds, including **\$50,000 from the SIED Fund, \$25,000 to be in the form of a loan and \$25,000 to be in the form of a grant**, and thereafter to own and operate the Project for the benefit of the City and the County.
- C. RCW 82.14.370 was adopted to serve the goals of promoting business in rural distressed areas, providing family wage jobs and the development of communities of excellence in such areas, and the parties expect the Project to further these goals.
- D. RCW 43.160 and 43.160.020 adopted and amended for related purposes with those of RCW 82.14.370, define public facilities to include various buildings, structures and works, such as the Project.
- E. The County, under authority of RCW 36.01.085, and by agreement of February 19, 1999, has engaged the Yakima County Development Association, also known as New Vision, to provide administrative and technical assistance in furtherance of the County's economic development.
- F. The County has also created the SIED Board to review applications for grants from the SIED Fund and make recommendations for SIED Fund investments based on commitment of other funds, potential for resulting job creation, and other factors.
- G. New Vision has investigated the Project and assisted in preparing the pending application for SIED funds, and the SIED Board has reviewed the application for SIED funds and has recommended approval.
- H. The SIED Fund balance is sufficient to make the requested contribution to the Project.
- I. RCW 39.34 authorizes interlocal agreements whereby municipal governments may jointly exercise the powers granted to each.

V. MUTUAL CONSIDERATION

- A. **COUNTY LOAN**—The County shall *loan Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)* for the Project described herein. **This loan amount shall be drawn on the SIED Fund by County warrant, payable to the City, upon the next Yakima County Auditor's warrant issue.**

EXHIBIT "A"

- B. **REPAYMENT OF COUNTY LOAN**—The City shall *repay* the County's loan of **Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) with interest on unpaid principal, at an annual per annum rate of _____%**, which is the Yakima County Interfund Loan Rate on the date this Contract is approved by the County. Interest shall accrue from the date this contract is approved by the County.

Repayment shall be made by the City in five equal annual installments (including principal and interest) payable on June 1, 2014, and annually thereafter on June 1 of each year, with the final payment nevertheless due on June 1, 2018; Provided, however, that the final installment may be in such greater or lesser amount as shall be required for full amortization of the repayment amount.

These payments shall be by check payable to Yakima County Infrastructure Fund and delivered to Yakima County Treasurer, Yakima County Courthouse, Room 115, 128 North 2nd Street, Yakima, WA 98901. The City obligation hereunder shall be a limited general obligation of the City, payable from any legally available source of funds. Exhibit A attached hereto and incorporated herein reflects the Debt Service Schedule as noted.

In the event of payment by the City of any one or more installments, or of the entire loan balance, before the date prescribed in Exhibit A, interest shall accrue on such installment(s) or balance until, but not beyond, the June 1 next succeeding the date of such payment(s). If more than one installment is paid during any repayment year, then the repayment period recited above shall be correspondingly shortened and the scheduled of payments reflected in Exhibit A shall be correspondingly advanced.

- C. **COUNTY GRANT**—The County shall *grant* **Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)** to the City for the Project described herein. **This grant shall be by County warrant drawn on the SIED Fund and payable to the City within 30 days of the County's receipt of a signed copy of the Project engineer's certificate that 50 percent of the work on the Project has been completed and the City's invoice for said grant.**
- D. **OWNERSHIP AND USE**—The City shall construct, own, maintain, and operate the Project as a part of its public infrastructure for economic development, available for use by manufacturing and industrial concerns proximate to the Project. The City shall also permit the use of the Project by the County and its departments on like terms with other users, at such time as the Board of Yakima County Commissioners may deem expedient. For purposes of this paragraph, ownership, maintenance, and operation of the Project or any portion thereof by another municipality, under any conveyance or dedication, which is subject to and preserves the County's right of use, shall be deemed ownership, maintenance, and operation by the City.

VI. RECORDS, REPORTS AND AUDITS

EXHIBIT "A"

The City agrees to maintain such records, make such reports, and follow such procedures as may be required by the County, pertaining to this Contract. All records pertaining to this Contract and work undertaken hereunder shall be retained by the City for a period of seven years after final audit unless a longer period is required to resolve audit findings or litigation. The County and other authorized representatives of the State and Federal government shall have access to any books, documents, papers, and records of the City, which pertain to this Contract or work undertaken hereunder for the purpose of making audit, examination, excerpts, and transcriptions.

VII. RELATIONSHIP OF PARTIES AND AGENTS

- A. The relationship of the City to the County, with regard to construction of the Project, shall be that of an independent contractor rendering professional services. The City shall have no authority to execute contracts or to make commitments on behalf of the County and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the County and the City.
- B. The City represents that it has or will secure at its own expense all personnel, contractors, and/or subcontractors required in order to perform work under this Contract. Such personnel shall not be employees of the County. All such personnel, contractors, and/or subcontractors shall be fully qualified and authorized/permitted under State and/or local law to perform such services.
- C. All services required hereunder will be performed by the City or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State or local law to perform such services.

VIII. SUSPENSION, TERMINATION, AND CLOSEOUT

If the City fails to comply with the terms and conditions of this Contract, the County may pursue such remedies as are legally available, including, but not limited to, the suspension or termination of this Contract in the manner specified herein:

- A. **SUSPENSION**—If the City fails to comply with terms and conditions of this Contract, or whenever the City is unable to substantiate full compliance with provisions of this Contract, the County may suspend this Contract pending corrective action or investigation, effective not less than seven days following written notification to the City or its authorized representative. The suspension will remain in full force and effect until the City has taken corrective action to the satisfaction of the County and is able to substantiate its full compliance with the terms and conditions of this Contract. No obligations incurred by the City or its authorized representative during the period of suspension will be allowable under this Contract, except:
 - 1. Reasonable, proper, and otherwise allowable costs which the City could not avoid during the period of suspension;

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2. Otherwise, allowable costs incurred during the period of suspension, if upon investigation, the County is satisfied of the City's compliance with the terms and conditions of this Contract to the extent of the compensation claimed by the City.

B. TERMINATION FOR CAUSE—If the City fails to comply with the terms and conditions of this Contract and any of the following conditions exist:

1. The lack of compliance with the provisions of this Contract were of such scope and nature that the County deems continuation of this Contract to be substantially detrimental to the interests of the County;
2. The City has failed to take satisfactory action as directed by the County or its authorized representative within the time period specified by same;
3. The City has failed within the time specified by the County or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Contract; then,
4. The County may terminate this Contract in whole or in part, and thereupon shall notify the City of termination, the reasons therefore, and the effective date, provided such effective date shall not be prior to notification of the City. After this effective date, no charges incurred under any terminated portions outlined in the application for funding are allowable.

C. TERMINATION FOR OTHER GROUNDS—This Contract may also be terminated in whole or in part by mutual consent and written agreement setting forth the conditions of termination, including effective date and, in case of termination in part, that portion to be terminated.

IX. COPYRIGHT RESTRICTION

No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the City.

X. COMPLIANCE WITH LAWS

The County and the City shall comply with all applicable laws, ordinances, and codes of the Federal, State, and local governments with regard to the performance of this Contract.

XI. TITLE VI OF THE CIVIL RIGHT ACT OF 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, creed, religion, sex, or national origin, be excluded from participation in, be denied the

benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

XII. SECTION 109—HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

No person in the United States shall on the grounds of race, color, creed, religion, sex, or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

XIII. AGE DISCRIMINATION ACT OF 1975 (As Amended)

No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving Federal funding assistance. (42 U.S.C. 610 et. seq.)

XIV. NONDISCRIMINATION: The City agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW Chapter 49.60) or the Americans with Disabilities Act (42 USC 12101 et seq). In the event the City violates this provision, the County may terminate this Agreement immediately and bar the City from performing any services for the County in the future.

XV. SECTION 504 OF THE REHABILITATION ACT OF 1973 (As Amended)

No otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds (29 U.S.C. 794).

XVI. INTEREST OF AGENTS AND OFFICERS OF THE COUNTY AND THE CITY

No member of the governing body of either party and no other officer, employee, or agent of either party who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in this Contract.

XVII. HOLD HARMLESS AND INDEMNITY

The City shall protect, defend, indemnify, and save harmless the County, their officers, employees, and agents from any and all third party costs, claims and resultant costs (judgments and/or awards of damages) which result from the activities to be performed by the

EXHIBIT "A"

City, its agents, employees, or subcontractors pursuant to this Contract. Additionally, the City shall indemnify Yakima County for bodily injury to person and damage to physical property to the extent resulting directly and proximately from the negligent acts of the City, its officers, employees, and/or agent in performance of this Agreement.

XVIII. PUBLIC LIABILITY

The City or its contractor(s) shall maintain for the duration of work under this Contract, issued on an occurrence basis, comprehensive liability insurance with a combined single limit of not less than one million dollars (\$1,000,000.00) from a company authorized to provide insurance in the State of Washington. Said policies shall provide that the policy shall not be canceled or altered by any party without written notice to Yakima County, delivered not less than 30 days prior to such cancellation or alteration. Applicant certifies that comprehensive liability insurance with a combined single limit of not less than \$1,000,000.00 is in effect.

XIX. ASSIGNABILITY

The City shall not assign any interest in this Contract and shall not transfer any interest in this Contract (whether by assignment or novation) without prior written consent of the County thereto, provided, however, that claims for money by the City from the County under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County by the City.

XX. NON-WAIVER

The failure of either party to insist upon strict performance of any provision of this Contract or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Contract.

XXI. CONTRACT MODIFICATIONS

It is mutually agreed and understood that no modification or waiver of any clause or condition of this Contract is binding upon either party unless such modification or waiver is in writing and executed by the County and the City.

XXII. SEVERABILITY

If any portion of this Contract is changed per mutual contract or any portion is held invalid, the remainder of this Contract shall remain in full force and effect.

XXIII. NOTICES

EXHIBIT "A"

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

TO CITY: Frank Sweet, Interim City Manager
818 E. Edison
Sunnyside, WA 98944

TO COUNTY: Craig Warner, Financial Services Director
128 North Second Street, Room 231
Yakima, WA 98901

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

XXIV. INTEGRATION

This Contract contains all terms and conditions agreed to by the County and the City. There are no other oral or written agreements between the City and County as to the subjects contained herein. No changes or additions to this Contract shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

XXV. GOVERNING LAW AND VENUE

All questions of the validity, construction, and application of this Contract shall be governed by the laws of the State of Washington. Venue for any suit between the parties arising out of this Contract shall be the Superior Court of Yakima County, Washington.

XXVI. FILING

Upon execution by the authorized representatives of the parties, a copy of this Contract shall be promptly filed with the Yakima County Auditor pursuant to RCW 39.34.040.

EXHIBIT "A"

IN WITNESS WHEREOF, the County and the City have executed this Contract as of the date and year last written below.

CITY OF SUNNYSIDE

BOARD OF COUNTY COMMISSIONERS

Mike Farmer, Mayor

J. Rand Elliott, Chairman

Approved as to Form:

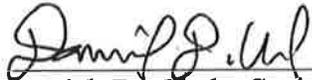
Michael D. Leita, Commissioner

Scott Beyers, City Attorney

Kevin J. Bouchey, Commissioner

Approved as to Form:

Attest:



Daniel D. Clark, Senior Deputy Prosecuting
Attorney WSB #25901

Delia Saenz, Clerk/Treasurer

CONTRACT AUTHORIZATION

Date

Attest:

Tiera L. Girard, Clerk of the Board

Date