

RESOLUTION 2012 - 55

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
MEMORANDUM OF UNDERSTANDING BY AND
BETWEEN CITY OF SUNNYSIDE AND PORT OF
SUNNYSIDE FOR GENERAL SERVICE CONTRACT
(Pacific Power & Light)**



WHEREAS, the City of Sunnyside and Port of Sunnyside have cooperated with regard to development of a project undertaken by the City of Sunnyside, as described in the attached documentation; and

WHEREAS, the City of Sunnyside and Port of Sunnyside have negotiated a Memorandum of Understanding whereby the Port of Sunnyside will order electric service extension, and the City of Sunnyside will reimburse the Port of Sunnyside for the costs of such extension; and

WHEREAS, state law authorizes interlocal cooperative agreements between municipal corporations to further and promote efficient governmental functions of each entity; and

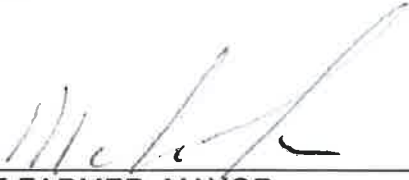
WHEREAS, the City Council of the City of Sunnyside finds and determines that approval of such Memorandum of Understanding is in the best interests of residents of the City and will promote the general health, safety and welfare.

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

SECTION 1. That the Memorandum of Understanding, 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 Memorandum 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 9th day of July, 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

EXHIBIT "A"

**MEMORANDUM OF UNDERSTANDING
By and Between
CITY OF SUNNYSIDE
And
PORT OF SUNNYSIDE**

(Pacific Power & Light – General Service Contract)

THIS MEMORANDUM OF UNDERSTANDING is executed by and between the CITY OF SUNNYSIDE, a municipal corporation, and PORT OF SUNNYSIDE, for the uses and purposes stated below.

I. Recitals

A. CITY OF SUNNYSIDE, hereafter called "City," is a municipal corporation of the State of Washington, with City Hall located at 818 East Edison Avenue, Sunnyside, Washington 98944.

B. PORT OF SUNNYSIDE, hereafter called "Port," is a special purpose Port (port district) duly formed and existing under the laws of the State of Washington, with administrative offices at 520 South 7th Street, Sunnyside, Washington 98944.

C. City and Port desire to enter into a General Service Contract regarding disposition of costs associated with a General Service Contract with Pacific Power & Light regarding installation of a power pole and service drop for the AWOS project described below.

II. Agreement

WHEREFORE, in consideration of the mutual understanding of the terms of the parties, the parties agree as follows:

1. AWOS Project. The Port is duly authorized to enter into a General Services Contract with Pacific Power & Light (PP&L), which Agreement is set forth in Exhibit "A" attached hereto and incorporated herein by this reference, which agreement is for installation of a power pole and service drop for the AWOS project, all as described in the General Services Contract.

2. Payment of Agreement Costs. Port agrees to assume and pay all installation costs for such installation as set forth in such General Services Contract by remitting and paying such amounts (\$4,178.00) to PP&L, the Port of Sunnyside will thereupon remit an invoice for reimbursement to the City of Sunnyside. The City of Sunnyside will then submit the costs to the FAA for grant reimbursement. The Memorandum of Understanding is intended to be a pass-through for these costs.

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3. Intention and Duty to Make Whole. It is the intention of each party to enter into this Memorandum of Understanding in order to ensure that the Port is fully reimbursed for all costs of construction arising out of the AWOS Project as set forth in the General Services Contract. This intention and responsibility includes the duty of City to defend, indemnify and make whole the Port, its elected officials, officers, employees and insurers from any damages, claims, liabilities, loss and/or injury arising out of such construction of such General Services Contract insofar as City is held liable and responsible to Pacific Power & Light, its successors and assigns and any third party claiming through Pacific Power & Light.

4. Term of Agreement. The term of agreement for this Memorandum of Understanding shall correspond to any term of agreement, and any obligation surviving termination of agreement, by and between the Port and Pacific Power & Light, or their respective successors and assigns.

5. Jurisdiction. In the event of any dispute between the parties hereto, jurisdiction shall lie in Yakima County, State of Washington, except insofar as jurisdiction is superseded by the General Service Contract.

6. Entire Agreement. This Memorandum of Understanding is the entire agreement of the parties, and shall not be amended or modified except in writing signed by both parties.

WHEREFORE this Memorandum is executed and effective this ____ day of _____, 2012, being the date signed by the last party to sign.

CITY OF SUNNYSIDE

PORT OF SUNNYSIDE

Frank A. Sweet, Interim City Manager

Amber Hansen, Executive Director

ATTEST:

Delilah Saenz, City Clerk

PACIFIC POWER
Yakima Operations Center
500 N Keys Rd. - Yakima, Wa 98901

EXHIBIT "A"

RECEIVED

JUN 11 2012

Friday, June 01, 2012

Request #: 005653638
Job Site: ABT SR 241/ SELLER RD
SUNNYSIDE, WA 98944

PORT OF SUNNYSIDE
PO BOX 329
SUNNYSIDE, WA 98944 0329

The line extension design for the above referenced request is complete. To provide you with electrical service, the following items are required:

[X] Please sign and return the enclosed Contract form. We will send you a copy for your records. Also, if applicable, please remit payment for any required Customer Advance amount. (check or money order only). ***IMPORTANT*** This Contract will expire unless you are ready to receive service by 10/29/2012.

[X] Electrical permit and meter base inspection with approval for the electrical connection ("Green or Amber Tagged") by the Washington State Department of Labor and Industries. Please notify us at 1-(800) 469-3981 after your meter base has been approved.

ALL OF THE ABOVE REQUIREMENTS MUST BE MET PRIOR TO THE SCHEDULING OF YOUR JOB. PLEASE BE AWARE, THERE IS GENERALLY A MINIMUM TWO TO THREE WEEK LEAD TIME REQUIRED FOR SCHEDULING OF OUR CONSTRUCTION CREWS.

We are enclosing a self-addressed stamped envelope for your convenience. If you elect to cancel this request, or if you have any questions regarding your requirements for electrical service, please contact our Builder's Hotline at 1-(800) 469-3981.

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(WA May2012)
Account #:44489621-001
Service ID #:738917334
Monthly

C/C: 11536
Request #: 5653638
Contract #:

**GENERAL SERVICE CONTRACT
(1000 KW OR LESS)
between
PACIFIC POWER
and
PORT OF SUNNYSIDE**

This General Service Contract ("Contract"), dated June 1, 2012, is between PacifiCorp, doing business as Pacific Power ("Company"), and **Port of Sunnyside** ("Customer"), for electric service for Customer's weather center operation at or near SR 241/Sheller Rd., Sunnyside, Washington.

The Company's filed tariffs (the "Electric Service Schedules" and the "Electric Service Rules") and the rules of the Washington Utilities and Transportation Commission ("Commission"), as they may be amended from time to time, regulate this Contract and are incorporated in this Contract. In the event of any conflict between this Contract and the Electric Service Schedules or the Electric Service Rules, such schedule and rules shall control. They are available for review at Customer's request.

1. **Delivery of Power.** Company will provide 120/240 volt, single-phase electric service to the Customer facilities.
2. **Contract Demand.** The specified Demand in kW that Customer requires to meet its load requirement and Company agrees to supply and have available for delivery to Customer, shall be 7 kW (diversified, based on Customer's submitted load prior to the signing of this Contract) unless otherwise agreed in writing in accordance with the terms of this Contract. Within fifteen (15) days of the written request for additional demand, Company shall advise Customer in writing whether the additional power and energy is or can be made available and the conditions on which it can be made available.
3. **Extension Costs.** Company agrees to invest \$2,062.00 (the "Extension Allowance") to fund a portion of the cost of the improvements (the "Improvements") as per tariff. Customer agrees to pay Company the estimated construction costs in excess of the Extension Allowance ("Customer Advance"). Customer has paid for engineering and design of Company's facilities in the amount of \$0.00, which amount is reflected in the balance due in the Customer selected option below. (**Customer must initial** selected option on the blank space at the beginning of the option and pay the balance due given in that option.)

____ **Refund Option.** The total Customer Advance for this work is \$4,178.00, the **balance due is \$4,178.00**, and Customer remains eligible for refunds. Company will refund part of the Customer Advance if additional customers connect to the Improvements within sixty (60) months of the date the Company is ready to supply service. Company will refund twenty-five percent (25%) of the refundable Customer Advance allocable to the **shared** Improvements for three additional applicants. The Company will try to inform Customer when a refund is due. However, in the event Company is unable to locate Customer or has not identified

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that a refund is due, **Customer is responsible for requesting a refund** within twenty-four (24) months of the additional applicant connecting to the Improvements.

— **Contract Administration Credit Option.** Customer chooses to receive a Contract Administration Credit of \$250 and waives their right to refunds should additional applicants connect to the Improvements. Accordingly, Customer's balance due is \$3,928.00.

4. **Contract Minimum Billing.** Customer agrees to pay a contract minimum billing (the "Contract Minimum Billing") during the first sixty (60) months beginning from the date the Company is ready to supply service. The Contract Minimum Billing shall be the greater of: (1) the **monthly schedule billing**; or, (2) \$59.42 plus eighty percent (80%) of the **monthly schedule billing**. Billings will be based on Rate Schedule No. 24 and superseding schedules. The Company will reduce the minimum charges by the amount of the facilities charges associated with refunds due from additional applicants connecting to the Improvements.
5. **Effective.** This Contract will expire unless Customer signs and returns an original of this Contract along with any required payment to Company within ninety (90) days of the Contract date shown on page 1 of this Contract.
6. **Term.** This Contract becomes binding when both the Company and Customer have signed it, and will remain in effect for five (5) years following the date when the Company is ready to supply service.

In the event Customer terminates service or defaults (which results in termination of service) within the first five (5) years of this Contract, Customer shall be responsible for paying the remaining Contract Minimum Billing for the remainder of the five (5) year term.

If Customer is not ready to receive service from Company within one-hundred fifty (150) days of the Customer signature date given on page five (5), then Company may unilaterally terminate this Contract. If Company has not installed Improvements, then such termination of this Contract shall not be treated as a Customer default and Customer shall not be responsible for paying the Contract Minimum Billing for the five (5) year term, only Customer's Advance will be applied to Company costs incurred for design, permitting and other associated Contract costs. However, if Company has installed Improvements so that Company is ready to supply service, but Customer is not ready to receive service from Company within said one-hundred fifty (150) days, then the failure of Customer being ready to receive service from Company may be treated as a Customer default, and Customer shall be responsible for paying the Contract Minimum Billing for the five (5) year term.

7. **Customer Obligations.** Customer agrees to:
 - a) Provide legal rights-of-way to Company, at no cost to the Company, using Company's standard forms. This includes rights-of-way on Customer's property and/or adjoining property and any permits, fees, etc. required to cross public lands;
 - b) Prepare the route to Company's specifications; and,
 - c) Comply with all of Company's tariffs, procedures, specifications and requirements.

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8. **Special Provisions:** Customer understands that there will be an approximate 5.5% drop in voltage at start up of irrigation pump. If there are issues with voltage drop, it will be the customers responsibility to correct the problem.
9. **Underground Facilities.** If service is provided by an underground line extension, Customer will provide, or Company will provide at Customer's expense: all trenching and backfilling, imported backfill material, conduit and duct, and furnish and install all equipment foundations, as designed by the Company. Company may abandon in place any underground cables installed under this Contract that are no longer useful to Company.
10. **Design, Construction, Ownership and Operation.** The Company shall design, construct, install, and operate the Improvements in accordance with the Company's standards. The Company will own the Improvements, together with the Company's existing electric utility facilities that serve or will serve Customer. Construction of the Improvements shall not begin until (1) both the Company and Customer have executed (signed) this Contract, and (2) all other requirements prior to construction have been fulfilled, such as permits, payments received, inspection, etc. Any delays by the Customer concerning site preparation and right-of-way acquisition or trenching, inspection, permits, etc. may correspondingly delay completion of the Improvements.

The Company warrants that its work in constructing and maintaining the Improvements shall be consistent with prudent utility practices. **THE COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** The Company's liability for breach of warranty, defects in the Improvements, or installation of the Improvements shall be limited to repair or replacement of any non-operating or defective portion of the Improvements or the Company's other electric utility facilities. Under no circumstances shall the Company be liable for other economic losses, including but not limited to consequential damages. The Company shall not be subject to any liability or damages for inability to provide service to the extent that such failure shall be due to causes beyond the reasonable control of the Company.

No other party, including Customer, shall have the right to operate or maintain the Company's electric utility facilities or the Improvements. Customer shall not have physical access to the Company's electric utility facilities or the Improvements and shall engage in no activities on or related to the Company's electric utility facilities or the Improvements.

11. **Payments.** All bills shall be paid by the date specified on the bill, and late charges shall be imposed upon any delinquent amounts. Company reserves the right to require customer payments be sent by EDI or wire transfer. If Customer disputes any portion of Customer's bill, Customer shall pay the total bill and shall designate the disputed portion. Company shall decide the dispute within sixty (60) days after Customer's notice of dispute. Any refund Company determines Customer is due shall bear interest at the rate then specified by the Commission or, if no rate is specified, the then effective prime rate as established by the Morgan Guaranty Trust Bank of New York.

The Company may request deposits from Customer to the extent permitted under the applicable Electric Service Rules and the applicable Electric Service Schedule. In the event of a default by Customer in any of its obligations, the Company may exercise any or

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all of its rights and remedies with respect to any such deposits.

12. **Furnishing Information.** Upon the Company's request, and upon Company entering into a confidentiality agreement with Customer, Customer shall submit its year-end financial statements to the Company, certified to be true and correct and in accordance with GAAP (General Accepted Accounting Principles). Furthermore, Customer shall submit additional information as the Company may reasonably request from time to time in furtherance of the purposes of this Contract. Such information shall be deemed confidential. The Company will base its decision with respect to credit, deposits or any other material matter on information furnished under this section by Customer, and shall reserve its rights with respect to such decisions should such information be inaccurate.
13. **Governing Law; Venue.** All provisions of this Contract and the rights and obligations of the parties hereto shall in all cases be governed by and construed in accordance with the laws of the State of Washington applicable to contracts executed in and to be wholly performed in Washington by persons domiciled in the State of Washington. Each party hereto agrees that any suit, action or proceeding in connection with this Contract may only be brought before the Commission, the Federal courts located within the State of Washington, or state courts of the State of Washington, and each party hereby consents to the exclusive jurisdiction of such forums (and of the appellate courts therefrom) in any such suit, action or proceeding.
14. **Assignment.** The obligations under this Contract are obligations at all times of Customer, and may not be assigned without the Company's consent except in connection with a sale, assignment, lease or transfer of Customer's interest in Customer's facility. Any such assignment also shall be subject to (i) such successor's qualification as a customer under the Company's policies and the Electric Service Rules, the applicable Electric Service Schedule, and (ii) such successor being bound by this Contract and assuming the obligation of Customer from the date of assignment, which may be evidenced by written agreement of such successor or other means acceptable to the Company. The Company may condition this assignment by the posting by the successor of a deposit as permitted under the applicable Electric Service Rules and the applicable Electric Service Schedule.
15. **Remedies; Waiver.** Either party may exercise any or all of its rights and remedies under this Contract, the applicable Electric Service Rules, the applicable Electric Service Schedule and under any applicable laws, rules and regulations. No provision of this Contract, the Electric Service Rules, or the applicable Electric Service Schedule shall be deemed to have been waived unless such waiver is expressly stated in writing and signed by the waiving party.
16. **Attorneys' Fees.** If any suit or action arising out of or related to this Contract is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including, without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.
17. **Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTRACT, THE ELECTRIC SERVICE SCHEDULE, THE

EXHIBIT "A"

ELECTRIC SERVICE RULES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

18. **Entire Agreement.** This Contract contains the entire agreement of the parties with respect to the subject matter, and replaces and supersedes in their entirety all prior agreements between the parties related to the same subject matter. **This Contract may be modified only by a subsequent written amendment or agreement executed by both parties.**

PORT OF SUNNYSIDE

By _____
signature

NAME (type or print legibly) TITLE

DATE

Customer's Mailing Address for Executed Contract

ATTENTION OF

ADDRESS

CITY, STATE, ZIP

PACIFIC POWER

By _____
signature

Mike Paulson Manager
NAME (type or print legibly) TITLE

DATE

Pacific Power's Mailing Address for Executed Contract

500 N Keys Rd.
ADDRESS

Yakima, WA 98901
CITY, STATE, ZIP