

**INTERLOCAL AGREEMENT BETWEEN
THE PORT OF SUNNYSIDE AND
THE CITY OF SUNNYSIDE**

THIS INTERLOCAL AGREEMENT, hereinafter referred to as the “Agreement”, is made and entered into by and between the PORT OF SUNNYSIDE, a Washington municipal corporation, hereinafter referred to as the “Port,” and the CITY OF SUNNYSIDE, a Washington municipal corporation, hereinafter referred to as the “City,” pursuant to the provisions of RCW Chapter 39.34.

RECITALS

A. WHEREAS the Port owns real property legally described on Exhibit “A” attached hereto, hereinafter referred to as the “Property”, and identified as the following parcel numbers:

Parcel A:	220901-14008; 220901-14001
Parcel B:	220901-14403; 220901-14402; 220901-14401
Parcel C:	220901-13001
Parcel D:	Intentionally Omitted
Parcel E:	220901-41404
Parcel F:	220901-41007

B. WHEREAS the Port is negotiating for the sale of the Property, or a portion thereof, to a third party for the purpose of the third party’s development and operation of an industrial scale renewable gas anaerobic digestion plant on the Property. The third party and/or its land-holding entity is hereinafter referred to as the “Industry” and the anaerobic digestion plant is hereinafter referred to as the “Facility”.

C. WHEREAS such negotiations include the Industry’s request to the Port for the construction of infrastructure improvements to serve the Property, which improvements will be the property of the City or the Port as provided herein.

D. WHEREAS the Port is willing to complete a public project for the construction of the infrastructure improvements to serve the Property, including transportation improvements and extensions to water main, sanitary sewer, and industrial sewer pipelines, all as shown on the “Industrial Park Utility Infrastructure, City of Sunnyside / Port of Sunnyside” drawing attached hereto as Exhibit “B”, hereinafter referred to as the “public project”, provided that the City participates in the funding thereof as provided herein. The parties acknowledge that the costs listed on Exhibit “B” are estimates.

E. WHEREAS the City is willing to provide its financial commitment to participate in the funding of the public project, thereby providing the Port with the assurance of financial participation the Port needs to continue its negotiations with the Industry for the sale of the Property, or a portion thereof.

F. WHEREAS the Port has determined the public project is needed in order to support the potential development of the Facility and that the Facility will strengthen the economy of the Port District by creating new local employment opportunities.

G. WHEREAS the City has determined the public project is needed in order to support the potential development of the Facility and that the Facility will support the development of the City by adding developed industrial property within the City and creating new local employment opportunities.

H. WHEREAS the Port and the City now wish to make the most efficient use of their powers by cooperating with each other for the design, construction, funding, ownership, and use of the public project for the mutual advantage of the Port District and the City.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals (which are hereby incorporated into and made part of this Agreement), and of the agreements and covenants herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Background.** The Port has negotiated and entered into a non-binding Letter of Intent with the Industry that provides for the potential sale by the Port of the Property, or a portion thereof, to be used by the Industry for the development and operation of an industrial scale renewable natural gas anaerobic digestion plant (previously referenced herein as the “Facility”). The Letter of Intent provides that the Property will be served by water, sewer and an access road, and that this infrastructure will be constructed by the Port. The infrastructure also may serve properties owned by the Port located West of the Sunnyside-Mabton Road and South of Alexander Road. The Port and the City are willing to share in the costs of constructing this infrastructure since the Port and the City will both receive economic and financial benefits from the development and operation of the Facility.

2. **Description of the Public Project.** The public project referenced in this Agreement is the design and construction of the infrastructure as summarized below and on the “Industrial Park Utility Infrastructure, City of Sunnyside / Port of Sunnyside” drawing attached hereto as Exhibit “B”. The parties acknowledge that the costs listed on Exhibit “B” are estimates. The public project includes:

a. **Schedule A.** A sanitary sewer lift station and a sanitary sewer pipeline extending West from said lift station is to be constructed in the approximate location shown on Exhibit “B” as “Schedule A”. In addition, an industrial sewer lift station and an industrial sewer pipeline extending to the West from said lift station may need to be constructed in the approximate location shown on Exhibit “B” as “Schedule A”.

b. **Schedule B.** A water main pipeline, a sanitary sewer main pipeline, and an industrial sewer pipeline will need to be constructed from the Southwest corner to the Northwest

corner of the real property to be purchased by the Industry in the approximate location as shown on Exhibit “B” as “Schedule B”.

c. **Schedule C.** A roadway, water main pipeline, a sanitary sewer main pipeline, and an industrial sewer pipeline shall be constructed from the Northwest corner of the real property to be purchased by the third party to the appropriate hook up locations on Alexander Road in the approximate location as shown on Exhibit “B” as “Schedule C”.

3. **The City’s Commitment to Participate in the Funding of the Public Project.** The City recognizes that the Port needs assurance that the City will participate in the funding of the public project before the Port will agree with the Industry to complete the public project. Therefore, the City shall not have the right to terminate this Agreement, or any of the City’s obligations hereunder, unless the Definitive Agreement (defined below) for the sale of the Property, or a portion thereof, between the Port and Industry is not fully executed within six (6) months from the date of this Agreement.

4. **Condition for Effectiveness of Agreement.** The transaction between the Port and the third party will not be binding until those parties enter into a final agreement (hereafter the “Definitive Agreement”). The execution of this Agreement with the City is necessary before the Port is willing to execute the Definitive Agreement. The terms and conditions of this Agreement shall not be implemented unless such a Definitive Agreement is entered into between the Port and the Industry within six (6) months from the date of this Agreement. Regardless, the City shall not have the right to terminate this Agreement, or any of the City’s obligations hereunder, at any time after this Agreement is fully executed unless such a Definitive Agreement is not entered into between the Port and the Industry within six (6) months from the date of this Agreement.

5. **Intergovernmental Coordination and Cooperation.** The Port and the City recognize the need for cooperation to expedite development of the public project. The Port and the City agree to coordinate and expedite the public project as follows:

a. **Designated Representatives.** Each party shall designate a representative responsible for communications between the parties and as a central point of contact for the public project. The designated representatives will be:

City of Sunnyside

Elizabeth Alba, City Manager
818 E. Edison Avenue
Sunnyside WA 98944
Phone: (509) 836-6305
Email: ecalba@sunnyside-wa.gov

Port of Sunnyside

Jay Hester, Executive Director
2640 E. Edison Avenue, Suite 1
Sunnyside WA 98944
Phone: (509) 839-7678
Email: jay@portofsunnyside.com

The designated representatives are responsible for ensuring that the parties' objectives stated herein and the funding and payment responsibilities stated in Sections 6 and 7 herein are met. The designated representatives are also responsible for coordinating the various agency or department staff assigned to the public project. The parties reserve the right to change the designated representatives, with notice to the other party, as the public project progresses through design and construction.

b. **Design Development.** The Port shall be responsible for the design concepts, drawings and specifications for the public project. The Port understands that the public project must comply with City regulations, and nothing in this Agreement shall be construed as making the City financially responsible for any costs or delay associated with any conditions or revisions required for the public project to comply with City regulations.

c. **Permit and Enforcement Authority.** The City, as the land use permitting agency with authority over that portion of the public project to be constructed within the City of Sunnyside, retains its permitting authority over the public project and also retains its authority to enforce any and all conditions imposed by such permits. The Port shall be responsible for obtaining all such permits, together with any and all permits required by Yakima County to the extent required because a portion of the public project is located outside of the City of Sunnyside or for any other reason.

d. **Construction.** The Port shall cause to be constructed all work necessary to construct the public project based upon the plans and specifications approved by the City and the Port in accordance with this Agreement. Provided, however, that nothing herein shall require the Port to construct the industrial sewer lift station, the industrial sewer pipeline, or the sanitary sewer pipeline running West from the proposed, new sanitary sewer lift station.

e. **Contract Administration.** The Port shall be solely responsible for the execution, administration, and fulfillment of any contracts it enters into for the performance of its responsibilities under this Agreement. In no event shall any contract entered into by the Port be construed as obligating the City except to the extent that the City has obligated itself, pursuant to this Agreement, to provide the funds to the Port to support such contracts. All consultant and construction contracts shall comply with applicable public works and procurement laws and regulations including but not limited to bonding, prevailing wages, nondiscrimination, retainage requirements, insurance, and workers compensation.

6. **Public and Community Involvement.** The Port and the City shall continue to work cooperatively to develop and implement a public involvement process for the development, design, and construction of the public project. Each party agrees to assist in the public involvement process, including community meetings, as determined necessary by the Port.

7. **Funding.** The public project shall be funded from the following sources.

a. **Initial Cash Funding.** The City agrees to provide the following cash amount for the funding of the public project. In addition, the Port is in the process of applying for

the following cash from Yakima County’s American Recovery and Reinvestment Act (ARRA) funds:

	Cash Amount
City of Sunnyside	\$950,000.00
Yakima County ARRA Funds	\$1,000,000.00

The City shall provide the funds listed above unless this Agreement is terminated by the Port as provided in this Section 7 or is terminated by either the Port or the City because the sale to the Definitive Agreement was not fully executed within six (6) months from the date of this Agreement. The Port may elect to terminate this Agreement at any time before any funds are received from the City.

The Port may elect to terminate this Agreement upon written notice to the City if the Yakima County ARRA funds are not awarded for the public project set forth in this Agreement.

b. **Application for Grant Funding.** The Port is in the process of applying for the following grants from Yakima County’s Supporting Investment in Economic Development (SIED) and Washington’s Community Economic Revitalization Board (CERB):

	Grant Amount
SIED	\$1,000,000.00
CERB	\$1,250,000.00

The Port may elect to terminate this Agreement upon written notice to the City if such grants are not awarded for the public project set forth in this Agreement.

c. **Application for Loan Funding.** The Port is also in the process of applying for the following loans from Yakima County’s Supporting Investment in Economic Development (SIED) and Washington’s Community Economic Revitalization Board (CERB):

	Estimated Loan Amount	Estimated Interest Rate	Estimated Loan Term
SIED	\$1,000,000.00	2%	10 years
CERB	\$3,750,000.00	1%	10 years

The Port may elect to terminate this Agreement upon written notice to the City if such loans are not awarded for the public project set forth in this Agreement.

In addition to the City’s cash payment of \$950,000.00 referenced in subsection (a) above, the City shall reimburse the Port for amounts equal to 55.5226% of the SIED and CERB loans, plus interest over a period of ten (10) years as further provided in Section 8(a) below. The Port shall be responsible for amounts equal to the remaining 44.4774% of the SIED and CERB loans, plus interest over a period of ten (10) years. The calculation of these percentages is shown on Exhibit “C” attached hereto. The parties acknowledge that the loan amounts provided

in the above table and in Exhibit “C” are estimates, and that the parties will pay their respective percentages of the SIED and CERB loans regardless of the actual SIED and CERB loan amounts associated with the public project.

Therefore, the Port shall be the borrower for both the SIED and CERB loans, but 55.5226% amount of each loan payment shall be paid by the City to the Port as further provided in Section 8 of this Agreement.

d. **Funding by the Port.** Other than payments made by the Industry, the Port shall pay the costs, fees, and expenses for the completion of the public project contemplated herein to the extent that such costs, fees, and expenses the funding sources provided in Sections 7(a), 7(b), and 7(c) set forth above, together with 44.4774% of the SIED and CERB loans, plus interest over a period of ten (10) years.

8. **Payment.**

a. **City’s Reimbursement to the Port for the SIED and CERB Loan Payments.** The Port shall be the borrower with regards to both the SIED loan and the CERB loan referenced in Section 7(c) above, and the Port shall be responsible to make all such loan payments. However, the City shall participate in the loans by reimbursing the Port for 55.5226% of all such loan payments. For informational purposes only, it is estimated that the City will allocate the initial loan amounts as follows:

	Roadway Costs	Water Costs	Sewer Costs
Loan Allocation	59%	23%	18%
Estimated Initial Loan Balance (on \$2,682,882)	\$1,582,900	\$617,063	\$482,919

b. **Invoices and Payment.** The City shall pay the Port the amount of \$950,000.00 plus the SIED loan and CERB loan amounts, plus interest, (all as provided above) as follows:

i. **Payment of the \$950,000.00 Cash.** The \$950,000.00 cash payment from the City to the Port shall be due upon completion of final design and beginning advertising of the public project set forth in this Agreement. The Port shall submit an invoice to the City upon such completion and the City shall pay the Port within 30 calendar days after receipt of such invoice.

ii. **Payment of the SIED Loan and CERB Loan, Plus Interest.** The City’s installment payments to the Port for the SIED loan and the CERB loan shall coincide with the installment payments due from the Port to SIED and to CERB. The Port shall submit an invoice to the City at least thirty (30) days before the due date for each SIED loan payment and each CERB loan payment, provided that the Port’s failure to submit an invoice shall not affect the City’s obligation to make such payment to the Port. The City shall make such payments to the Port within thirty (30) days after receipt of each such invoice.

9. **Ownership and Rights to Use.** All transportation improvements, water main pipeline, and sanitary sewer pipeline shall be dedicated to and owned by the City but shall be public improvements for which the Facility shall have the right to use. The industrial sewer pipeline and related facilities shall be owned by the Port.

10. **Organization.** No separate legal or administrative entity shall be created as a result of this Agreement. Each of the parties is acting independently of the other in entering into this Agreement and in exercising its rights and in carrying out its responsibilities pursuant to this Agreement. In no event shall the parties be deemed to be partners or the agent for the other party.

11. **Compliance with Laws.** Each of the parties shall comply with all local, state and federal laws relating to the respective responsibilities of the parties.

12. **Governmental Authority.** This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, the parties, or either of them. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities, that are required to be incorporated into agreements of this character, are by this reference incorporated into this Agreement.

13. **Modifications.** No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to the Agreement and this Agreement, approved by the legislative bodies of both parties and signed by both parties.

14. **Equal Opportunity.** Neither party shall 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 disability in violation of applicable state and federal laws.

15. **Restriction on Assignment.** This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by either party.

16. **Non-Waiver.** The failure of either party to insist upon strict performance of any provision of this Agreement 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 Agreement.

17. **Entire Agreement.** This written document constitutes the entire agreement between the Port and the City. There are no other oral or written agreements between the parties as to the subjects covered herein.

18. **Notices.** All notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as below:

To the City:

City of Sunnyside
Attn: Elizabeth Alba, City Manager

818 E. Edison Avenue
Sunnyside WA 98944

To the Port:

Port of Sunnyside
Attn: Jay Hester, Executive Director
2640 E. Edison Avenue
Sunnyside WA 98944

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any action concerning this contract shall be brought in the Superior Courts of Yakima County.

City of Sunnyside

Port of Sunnyside

By: _____
ELIZABETH ALBA
City Manager

By: _____
JAY HESTER
Executive Director

Date: _____

Date: _____

Exhibit “A”

Legal Description of the Property

Exhibit “B”

Industrial Park Utility Infrastructure City of Sunnyside / Port of Sunnyside

Exhibit “C”

Allocation of Costs and Funding for the Public Project