

RESOLUTION NO. 33 FOR 2022

A RESOLUTION OF THE CITY OF SWEET HOME APPROVING THE SOLE-SOURCE PROCUREMENT OF CERTAIN LED STREET LIGHT CONVERSION SERVICES; DETERMINING THAT THE SERVICES ARE AVAILABLE FROM ONLY ONE SOURCE; AND ADOPTING CERTAIN FINDINGS IN SUPPORT OF THE USE OF THE SOLE SOURCE PROCUREMENT METHOD TO OBTAIN THE SERVICES.

WHEREAS, pursuant to ORS 279A.060 and SHMC 2.08.010, the Sweet Home City Council (the “Council”) acts as the local contract review board (the “LCRB”) for the City of Sweet Home (“City”); and

WHEREAS, ORS 279B.075 authorizes the City LCRB to purchase a particular product or service available from only one source if City satisfies the requirements of ORS 279B.075 and OAR 137-047-0275; and

WHEREAS, prior to purchasing a product and/or acquiring services available from one source, ORS 279B.075 requires City to determine that the product and/or service is available from only one seller or source; and

WHEREAS, ORS 279B.075 and OAR 137-047-0275 also require City to adopt certain findings in support of the sole-source determination; and

WHEREAS, pursuant to agreements with PacifiCorp, City is responsible for the cost of electricity to streetlights within the City of Sweet Home that are owned by PacifiCorp; and

WHEREAS, City’s maintenance obligations would be significantly reduced if street lighting is converted to light-emitting diode (“LED”) fixtures; and

WHEREAS, as more particularly described in the findings and determinations contained in the attached Exhibit A, Ameresco, Inc. (“Contractor”) is the only contractor authorized by PacifiCorp to perform LED conversions on PacifiCorp owned streetlights (the “Services”); and

WHEREAS, by adoption of this Resolution No. 33 for 2022 (this “Resolution”), the Council desires to adopt findings in support of a sole-source determination and approve the use of a sole-source procurement method (i.e., award a contract without competition) for the Services.

NOW, THEREFORE, the City Council resolves as follows:

1. Findings; Determination; Approval. In addition to the above-stated findings, which are hereby adopted, the Council, acting as the LCRB, adopts those findings and determinations in support of a sole source procurement contained in the attached Exhibit A. Subject to and in accordance with ORS 279B.075 and the Public Contracting Ordinance, the Council hereby (a) determines that the Services are available from one source, (b) determines that the attached findings support the determination that the Services are available only from one source, and (c) approves the use of a sole-source procurement method (i.e., award a contract without competition) to procure the Services from Contractor.

2. Notice. In accordance with OAR 137-047-0275(2), the city manager or his or her designee will give notice of the Council's approval of the sole-source procurement described herein. Any affected person may protest City's determination that the Services are available from only one source in accordance with OAR 137-047-0710.

This Resolution will take effect upon adoption. PASSED by the Council and approved by the Mayor, this 8th day of November, 2022.



Mayor 11-8-22

ATTEST:



City Manager – Ex Officio City Recorder 11-8-22

Exhibit A

Sole-Source Determinations and Findings

A. Background

1. Pursuant to agreements with PacifiCorp, City is responsible for the cost of electricity used by streetlights within the City that are owned by PacifiCorp. There are approximately 900 PacifiCorp-owned streetlights within the City.
2. City determined that conversion to LED streetlights will significantly reduce maintenance costs as LED lighting fixtures have a longer life span and less operating costs than other forms of lighting fixtures.
3. Contractor is the only contractor authorized by PacifiCorp to perform LED conversions on PacifiCorp owned streetlights.

B. Description of the Services

City desires to retain Contractor to perform the Services, which include the following: (i) cost-benefit analysis of converting particular streetlights to LED fixtures; (ii) determination of suitable LED fixtures; (iii) acquisition of selected LED fixtures; (iv) installation of chosen LED fixtures; (v) recycling of replaced fixtures; (vi) project management and quality control; and (vii) other tasks necessary or proper to complete the LED streetlight conversion project.

C. Description of Contract

1. City desires to enter into a contract with Contractor pursuant to which Contractor will perform the Services and be reimbursed for materials acquired by Contractor in the performance of the Services. Payment will be structured such that Contractor will be reimbursed over time from maintenance expenses City would ordinarily pay for maintaining PacifiCorp's streetlights pursuant to its agreement with PacifiCorp. City estimates that the value of the Services will be approximately \$500,000.00.
2. In accordance with ORS 279B.075(3), City will negotiate with Contractor to obtain contract terms that are advantageous to City. Notwithstanding anything contained in this Resolution to the contrary, the contract for the Services (a) will be in form and content satisfactory to City and contain such terms and conditions the city administrator and/or city attorney determine necessary and/or appropriate, and (b) will be subject to the review and approval of the city administrator and city attorney

D. Findings

Subject to and in accordance with ORS 279B.075(2), City's determination of a sole-source procurement for the Services is supported by findings, including, without limitation, the following:

1. The efficient maintenance and operation of PacifiCorp's streetlights requires a conversion to LED fixtures. LED fixtures have a longer life span and less operating costs than other forms of lighting fixtures. Conversion to LED fixtures will provide City better lighting while reducing City's long term maintenance obligations.
2. As noted above, Contractor is the only contractor authorized to perform the Services on PacifiCorp owned streetlights.
3. Contractor is the single most experienced firm in the Northwest when it comes to streetlight conversion. Twenty-five plus municipal and state clients in Oregon and Washington have selected Ameresco for streetlight conversion including Oregon Department of Transportation and Washington Department of Transportation. Projects include conversions in City of Bend, City of St. Helens, City of Milwaukie, City of Medford, City of Coos Bay, City of Madras, and City of Pendleton.
4. Contractor has been sole sourced with the City of Coos Bay, City of Madras, and the City of Pendleton to complete similar streetlight conversion projects.

5. Contractor provides a complete turnkey service under one contract including audit, design, labor and material, construction management and financing.
6. Because Contractor is the sole source of the Services, the use of the sole-source procurement method is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

**Attachment B
Insurance**

By Ameresco: Ameresco shall provide and maintain at its expense the following insurance coverage:

- (i) Workers' Compensation and Employer's Liability Insurance as required by applicable State law.
- (ii) Commercial General Liability Insurance, including contractual liability, Bodily Injury per person, \$1 million; Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million; Personal Injury per occurrence, \$1 million.
- (ii) Comprehensive Automobile Liability Insurance, including owned, non-owned and hired automotive equipment of, Bodily Injury per person, \$1 million; Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million.
- (iii) Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under the Agreement. Ameresco shall provide proof of insurance of not less than the following amounts as determined by Owner:

Per occurrence limit for any single claimant: \$2,000,000

Ameresco shall deliver to Customer a Certificate of Insurance naming Customer as an additional insured party under paragraphs (ii) and (iii), above.

Attachment A
Scope of Work and Budget

AMERESCO shall perform the Services as detailed below.

Audit of existing streetlight fixtures for the purposes of developing a plan to replace non-LED streetlight heads within the City of Sweet Home, OR with LED technology.

At the conclusion of this audit, AMERESCO will deliver a spreadsheet to the CLIENT that includes a full inventory of all streetlights within the City of Sweet Home including quantity, type, wattage, and GIS-based location.

The intent of this audit is to set the basis for and lead into an Energy as a Service (EaaS) contract with the CLIENT and AMERESCO to execute the retrofit conversion of the streetlights.

The budget for such Services, including all costs and expenses will be a fixed fee sum of \$26,866. Any increases to this budget shall require additional authorizations.

Upon completion of the services described above, should the CLIENT decide to engage AMERESCO in a follow-on EaaS contract to execute the subsequent streetlight conversion project, the fixed fee for services can be transferred as a line-item cost into the follow-on EaaS contract.

Exhibit A

Sole-Source Determinations and Findings

A. Background

1. Pursuant to agreements with PacifiCorp, City is responsible for the cost of electricity used by streetlights within the City that are owned by PacifiCorp. There are approximately 900 PacifiCorp-owned streetlights within the City.
2. City determined that conversion to LED streetlights will significantly reduce maintenance costs as LED lighting fixtures have a longer life span and less operating costs than other forms of lighting fixtures.
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Subject to and in accordance with ORS 279B.075(2), City's determination of a sole-source procurement for the Services is supported by findings, including, without limitation, the following:

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2. As noted above, Contractor is the only contractor authorized to perform the Services on PacifiCorp owned streetlights.
3. Contractor is the single most experienced firm in the Northwest when it comes to streetlight conversion. Twenty-five plus municipal and state clients in Oregon and Washington have selected Ameresco for streetlight conversion including Oregon Department of Transportation and Washington Department of Transportation. Projects include conversions in City of Bend, City of St. Helens, City of Milwaukie, City of Medford, City of Coos Bay, City of Madras, and City of Pendleton.
4. Contractor has been sole sourced with the City of Coos Bay, City of Madras, and the City of Pendleton to complete similar streetlight conversion projects.
5. Contractor provides a complete turnkey service under one contract including audit, design, labor and material, construction management and financing.

6. Because Contractor is the sole source of the Services, the use of the sole-source procurement method is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of November 22, 2022 between City of Sweet Home, Oregon, herein referred to as CLIENT, and Ameresco, Inc., having its principal place of business at 111 Speen Street, Framingham, MA 01701 hereinafter referred to as AMERESCO.

Whereas, AMERESCO and CLIENT desire to enter into an agreement for the performance of certain services related to audit of existing streetlights within the City of Sweet Home, OR as such services are described from time to time in the Scope of Work attached to this Agreement as Attachment A ("the Project") for CLIENT.

Whereas, AMERESCO has the specific knowledge and experience necessary to assist and support CLIENT in its business activities.

Now, therefore, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. TERM - CLIENT does hereby offer and AMERESCO does hereby accept engagement of AMERESCO as an independent contractor for services, which may be provided to CLIENT for a term beginning the date hereof and terminating when the Scope of Work is completed and AMERESCO has been paid all amounts due hereunder, unless terminated earlier as provided for in Section 7.
2. TIME AND SERVICES - AMERESCO shall provide services pertaining to the execution of the Scope of Work.
3. AUTHORIZATION FOR SERVICES - CLIENT has authorized the following persons to act on its behalf, Kelcey Young, City Manager, City of Sweet Home, OR (hereinafter, "Authorized Person or Persons"). By its execution of this Agreement, CLIENT authorizes AMERESCO to proceed with the Scope of Work set forth in Attachment A. Any additional assignments beyond the Scope of Work set forth in Attachment A undertaken by AMERESCO ("Additional Services") shall require preauthorization in writing by an Authorized Person, prior to the commencement of any activities on CLIENT's behalf. A completed Scope of Work and compensation amount similar to the one contained in Attachment A, when issued and signed by an Authorized Person and an Officer of AMERESCO, shall be sufficient to meet this requirement.
4. COMPENSATION – CLIENT shall pay AMERESCO a fixed fee of Twenty-six Thousand Eight Hundred Sixty-Six (\$26,866.00) dollars for the Scope of Work described in Attachment A hereto, inclusive of local taxes, duties, and fees.
5. PAYMENT - Payments shall be made to AMERESCO as set forth on Attachment A hereto or, with respect to any Additional Services, as set forth in any Attachment A authorized after the date hereof, and, in any case, per the specific requirements of any such Attachment A. CLIENT shall make payment to AMERESCO within thirty (30) days after the submission of each invoice. All amounts not paid to Ameresco on or before the due date specified above shall accrue interest at twelve percent (12%) per annum, or such lower rate as is prescribed by

applicable law.

6. COMMUNICATIONS - All communication to AMERESCO regarding this Agreement shall be addressed as follows:

Ameresco, Inc.
222 Williams Ave. South, Suite 100
Renton, WA
Attn: Ron Haxton, VP Northwest Region

With copy to:

Ameresco, Inc.
111 Speen Street, Suite 410
Framingham, MA 01701
Attn: Contract Administrator

All communications to CLIENT regarding this Agreement shall be addressed as follows:

City of Sweet Home
3225 Main Street
Sweet Home, OR 97386
Attn: Kelcey Young, City Manager

7. TERMINATION - This Agreement may be terminated by either party because of the breach of the other at any time by notice to the other party, in writing, which termination shall be effective upon receipt.
8. COMPLIANCE WITH LAWS - In performing the Scope of Work hereunder, AMERESCO shall comply with all laws, regulations, codes, ordinances, and other applicable governmental requirements in effect, including without limitation building codes, life safety and similar codes, and all environmental laws and regulations.
9. COMPLIANCE WITH REGISTRATIONS/LICENSING - AMERESCO shall comply with all licensing laws and regulations governing the provision of the Scope of Work hereunder.
10. INTEGRATION - This Agreement including its Attachments and any other documents, exhibits, specifications and drawings represents the entire and integrated agreement between AMERESCO and CLIENT, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both AMERESCO and CLIENT, and is binding upon the parties, their successors and assigns.
11. RECORDS AND DATA - CLIENT will furnish to AMERESCO accurate and complete data concerning or relating to the Project.
12. ACCESS; COOPERATION - CLIENT will provide to AMERESCO safe and sufficient

access to the Project location at all reasonable times during normal business hours for AMERESCO to perform the Scope of Work, and will otherwise attempt to fully and completely cooperate with all reasonable requests of AMERESCO.

13. GOVERNING LAWS - For the purpose of this Agreement, the governing laws of the State in which the Project is located shall apply.
14. OWNERSHIP OF TANGIBLE DOCUMENTS; INTELLECTUAL PROPERTY – CLIENT shall receive ownership of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by AMERESCO and distributed to CLIENT for the Project, upon the making of final payment to AMERESCO. CLIENT acknowledges and agrees that: (1) such Documents are not intended or represented to be suitable for use on the Project unless completed by AMERESCO, or for use or reuse by CLIENT or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by AMERESCO; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by AMERESCO, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to AMERESCO or to its officers, directors, members, partners, agents, employees, and consultants; and (3) CLIENT shall indemnify and hold harmless AMERESCO and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by AMERESCO. AMERESCO shall retain its rights in its standard drawing details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized or modified in the performance of the Services shall remain the property of the originator, but in the event CLIENT pays AMERESCO for such property, it shall have a royalty free perpetual license to use said property.
15. CONSEQUENTIAL DAMAGES - Except with respect to a Party's gross negligence or willful misconduct, and otherwise to the fullest extent permitted by law, neither party shall be liable to the other for loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; or for any special, consequential, indirect, punitive, or exemplary damages.
16. LIMITATION OF LIABILITY - Except with respect to a Party's gross negligence or willful misconduct, and otherwise to the fullest extent permitted by law, AMERESCO's maximum obligation and/or liability for its own negligent acts or those of its employees or subcontractors, for any and all claims, actions, damages or expenses arising out of, or in any way related to the provision of its services under this Agreement (including but not limited to, an alleged breach of this Agreement) shall not exceed \$26,866.00 or, if covered by the insurance required to be maintained by Ameresco under Section 18 hereof, the required limits of such insurance.
17. STANDARD OF CARE/WARRANTY - AMERESCO will perform its duties in such a manner that is reasonable and consistent with customary standards of practice and care within the industry. AMERESCO makes no other warranties or guarantees, express or

implied, relating to the Scope of Work and AMERESCO disclaims any implied warranties or warranties imposed by law, including warranties of merchantability and fitness for a particular purpose.

18. INSURANCE – Ameresco shall procure and maintain insurance as set forth in Attachment B.

Each party warrants that it is free to enter into and perform this Agreement, and will remain free to do so from the date hereof through the term of this Agreement.

AMERESCO, INC.

City of Sweet Home, Oregon

By: _____

By:  _____

Name: Ron Haxton

Name: Greg Mahler

Title: Vice President, NW Region

Title: Mayor

Date: _____

Date: November 8, 2022