

BURBANK UTILITY AGREEMENT

THIS BURBANK UTILITY AGREEMENT (“Agreement”), dated and effective as of _____, is entered into by the PORT OF WALLA WALLA, a port district organized under the laws of the State of Washington (“Port”) and _____^a authorized to do business in the State of Washington (“Owner”). The Port and Owner may each be referred to herein as a "Party" and collectively the "Parties."

RECITALS

WHEREAS, the Port acquired approximately 257 acres of property in the Burbank area of northwestern Walla Walla County that is comprised of the Burbank Industrial Park and Burbank Business Park that the Port operates, referred to herein as the Port’s Burbank Properties, and in which the Port sells and leases lots for economic development purposes;

WHEREAS, the Port and Owner entered a purchase and sale agreement between the parties, dated _____ (“Purchase and Sale Agreement”), regarding one parcel of land located in the Port’s Burbank Business Park, and desire to enter this Agreement;

WHEREAS, as a result, Owner owns the property legally described on Exhibit A (the “Property”) and shown on the map in Exhibit A-1;

WHEREAS, Owner intends to develop and operate a _____ at the Property as more specifically set forth in Owner’s Service Application, dated _____, for the Property (the “Service Application”) and attached in Exhibit B:

WHEREAS, the Port is the exclusive water and sewer utility provider in the Burbank Business Park and for the Property, and the Port has statutory authority to provide water and sewer services to other property owners under RCW 53.08.040;

WHEREAS, the Port owns and operates a well field (“Burbank Well”) that is authorized to withdraw 800 gallons per minute and 463 acre-feet per year under water right certificate No. 4495-A to serve a regional service area, including Burbank;

WHEREAS, the Port’s policy is to operate the Burbank Well as a sustainable resource for the long-term benefit of all current and future owners and tenants in the Burbank Business Park and Burbank Industrial Park, and accordingly the Port will allocate and manage the Burbank Well water supply so that owners and tenants all of such properties have access to a reasonable supply water for their intended commercial and industrial uses;

WHEREAS, Owner acknowledges the City of Pasco is providing wastewater treatment pursuant to the Pasco Interlocal Agreement, which applies to the Property and Owner’s contribution to the Port’s Sewer System;

WHEREAS, the Port has purchased a block of wastewater treatment capacity from the City of Pasco under the Pasco Interlocal Agreement, which runs for a term of seventy-five (75) years unless terminated earlier pursuant to its terms; and

WHEREAS, the Port desires to provide, and Owner desires to accept, water and sewer utility service to the Property pursuant to the terms of this Agreement.

NOW THEREFORE in consideration of the foregoing recitals, incorporated herein, and mutual covenants and promises contained herein, the Parties hereby agree as follows:

1. TERM OF AGREEMENT. This Agreement takes effect on the date stated above after both Parties have duly executed and delivered the Agreement, and the Agreement shall remain in effect for the duration of the Pasco Interlocal Agreement.

2. DEFINED TERMS. Unless otherwise defined herein, the following terms shall have the meanings ascribed to them below:

- a. Acceptance Point: the point where sewage and wastewater flows travel through the sewer transmission pipeline(s) and cross the Property line at the location shown on Exhibit A-1.
- b. Port's Burbank Properties: approximately 257 acres of property in Burbank which is zoned for industrial and commercial development, and is comprised of the Burbank Industrial Park and Burbank Business Park that the Port operates and in which the Port sells and leases lots for economic development purposes.
- c. Burbank Industrial Park: approximately 111 acres (including roads) of land that is zoned Heavy Industrial and located west of the Burbank Business Park.
- d. Burbank Business Park: approximately 146 acres (including roads) of land that is zoned "Industrial Business Park" and located east of the Burbank Industrial Park.
- e. CCRs: that certain Declaration of Covenants, Conditions and Restrictions for the Burbank Business Park, recorded with the Walla Walla County Auditor under AFN 2010-01767.
- f. Delivery Point: the point where treated water travels through the water transmission pipelines, and crosses the Property line at the location of the water meter shown on Exhibit A-1.
- g. Pasco Interlocal Agreement: the set of agreements between the Port and the City of Pasco regarding wastewater conveyance, treatment, disposal, and administration and enforcement and any future amendments or supplements thereto, and enactments to implement the same, including the following:
 - i. City of Pasco and Port of Walla Walla Interlocal Agreement for Waste Water Treatment and Disposal Services, dated May 7, 2012, and

recorded with the Walla Walla County Auditor under AFN 2012-04026;

- ii. Amendment No. 1 to the City of Pasco and Port of Walla Walla Interlocal Agreement for Waste Water Treatment and Disposal Services, dated May 28, 2013, and recorded with the Walla Walla County Auditor under AFN 2014-07729;
- iii. Multi-Jurisdictional Agreement Between City of Pasco, Washington and Port of Walla Walla – Pretreatment Program Implementation Enforcement Agreement, dated September 29, 2014, and recorded with the Walla Walla County Auditor under AFN 1820728; and
- iv. Port of Walla Walla Resolution No. 11-24-14, adopted November 24, 2014, Adopting by reference the City of Pasco’s Wastewater Standards Ordinance Codified as Chapter 13.62 “Wastewater Pretreatment Requirements” of the Pasco Municipal Code; and
- v. City of Pasco Wastewater Standards Ordinance, codified as Chapter 13.62 of the Pasco Municipal Code, as it may be amended or supplemented from time to time.

- h. Sewer System: the sewer transmission system in the Burbank area that the Port installed, owns, and operates that collects sewage contributions from the Port’s Burbank Properties and conveys the same to the City of Pasco wastewater treatment system. The Sewer System excludes Owner’s sewer facilities located on the Property and upstream of the Acceptance Point.
- i. Water System: the Burbank Wells, pump stations, water transmission pipelines, and associated facilities that Port installed, owns and operates to supply water to the Port’s Burbank Properties. The Water System excludes Owner’s water facilities located on the Property and downstream of the Delivery Point; provided, however, that meters located on the Property are owned and operated by the Port and included in the Water System.

3. **EXHIBITS**. The following exhibits are attached hereto and incorporated herein as if fully set forth in this Agreement.

- Exhibit A – Legal Description of Property
- Exhibit A-1 – Map of Property in Burbank
- Exhibit B – Owner’s Service Application
- Exhibit C – Location of Sewer Acceptance Point
- Exhibit D – Location of Water Delivery Point(s) and Meter(s)
- Exhibit E – Sewer Treatment Fee Schedule
- Exhibit F – Water Fee Schedule

4. **SEWER SYSTEM AND SERVICE**.

- a. Acceptance of Service Application. The Port hereby accepts the Service Application with respect to Owner’s sewer service request, and agrees, pursuant to the terms and conditions of this Agreement, to accept Owner’s

sewage and wastewater flows solely resulting from the uses on the Property as described in the Service Application (Exhibit B).

- b. Construction; Ownership. The Port is responsible for the initial financing and construction of the Sewer System, obtaining all necessary permits, and operating the Sewer System consistent with regulatory requirements. The Port will extend a sewer connection to the Acceptance Point at the Port's sole cost and shall retain ownership of such sewer transmission pipelines up to the Acceptance Point. Owner shall be responsible for constructing all sewer pipeline(s) and other associated facilities on the Property to the Acceptance Point. Owner shall retain ownership of such sewer pipelines and facilities located on its Property "upstream" from the Acceptance Point.
- c. Acceptance Point. The Port shall accept the sewage and wastewater flows at the Acceptance Point. The Port shall be responsible for all maintenance and conveyance of the sewage and wastewater flows once such waste leaves the Property at the Acceptance Point. Owner shall be responsible for all maintenance and pretreatment, if necessary, of the sewage and wastewater flows up to the Acceptance Point.
- d. City of Pasco. The Pasco Interlocal Agreement, defined in Section 2(h) above, is incorporated into this Agreement as if fully set forth herein. The City of Pasco is the designated agent for implementation and enforcement of the wastewater standards. Owner consents and agrees to the jurisdiction of the City of Pasco regarding sewage and wastewater treatment, conveyance, and disposal, including enforcement and corrective actions.
- e. Waste Stream & Regulatory Standards.
 - i. *Acceptable Waste*. Owner shall send only such sewage and wastewater flows that comply with City of Pasco requirements and the Pasco Interlocal Agreement. Owner shall not place or deposit, or allow the placement or deposition of, any wastes or substances that do not comply with the Pasco Interlocal Agreement and the City of Pasco's standards and requirements.
 - ii. *Pretreatment Requirements*. Owner shall comply with City of Pasco approval, testing, and pre-treatment requirements and standards for unusual or high-strength wastes.
 - iii. *No Stormwater*. Owner shall not send or commingle any stormwater with its sewage and wastewater flow.
 - iv. *Flow Amount*. The quantity and rate of Owner's sewage and wastewater flow shall not exceed the amount requested in the Service Application and approved by the Owner.
- f. Increase in Sewer Demand or Change of Waste Character. Owner will not exceed the volume or strength or change the character of Owner's sewage or

wastewater flow from the information stated in the Service Application (Exhibit B) without the Port's, and the City of Pasco's as applicable, written consent and approval. In the event that the volume, strength, or character of Owner's sewage or wastewater flow is expected to increase or change from the information provided in the Service Application, the Owner may request to modify its sewage and wastewater flows to the Sewer System. The Port shall approve or deny the request in its sole discretion. A new Service Application and an amendment to this Agreement may be required at the Port's discretion to change or increase the wastewater flow.

- g. Sewer Connection Charge. Owner must pay an upfront sewer connection charge before the Port will extend the Sewer System, connect it to the Property, and commence sewer service to the Property. The sewer connection charge is

After payment of the connection charge, the sewer connection to the Property will remain active and in effect so long as it does not lapse or go unused as provided in Section 6(d) below.

- h. Monthly Rates and Fees. A monthly service fee shall apply to all sewer treatment provided by the Port. The current sewer treatment fees are attached as Exhibit E. The Port may increase the sewer treatment service fee. Prior to any proposed increase, the Port shall provide each Owner with at least 30 days prior notice, along with the opportunity to attend a public meeting to provide input prior to any final action being taken by the Port.
- i. Owner Control. Owner shall at all times maintain control over all sewer drains, pipes, and facilities located on the Property, access to the same, and over the waste stream deposited or discharged to the sewer facilities on Owner's Property. Owner shall not allow or suffer any unacceptable or non-compliant wastes, foreign matter, or stormwater to be discharged or dumped into the sewer facilities on the Property.
- j. Property & Facility Access. Owner shall allow the Port and the City of Pasco access to Owner's Property and sewer or wastewater-related facilities for purposes of sampling and monitoring, inspecting the condition of Owner's facilities and wastewater stream, and evaluating and determining the need and nature of any corrective action necessary to comply with City of Pasco standards and requirements.
- k. Additional Rules and Regulations. The Port may, from time to time, implement additional rules and regulations with respect to use of the Sewer System and acceptance of sewage and wastewater flows.

5. WATER SYSTEM AND SERVICE.

- a. Acceptance of Service Application. The Port hereby accepts the Service Application with respect to Owner's water service request, and agrees,

pursuant to the terms and conditions of this Agreement, to supply treated water and fire flow water solely for the uses on the Property as described in the Service Application (Exhibit B).

- b. Construction; Ownership. The Port is responsible for the initial financing and construction of the Water System, obtaining all necessary permits, and operating the Water System consistent with regulatory requirements. The Port will extend a _____ potable water line with a meter and a _____ (if applicable) fire suppression water line to the Delivery Point at the Port's sole cost and shall retain ownership of such water transmission pipelines and facilities up to the Delivery Point. The Port shall also be responsible for installing water meter(s) pursuant to Section 5(e). Exclusive of meters, Owner shall be responsible for extending water pipeline(s) "downstream" from the Delivery Point and into the Property and installing any associated facilities and all backflow assembly equipment, and shall retain ownership of such water pipelines and associated facilities and equipment located on its Property "downstream" from the Delivery Point; provided that Owner shall install and maintain all such water facilities in compliance with the Plumbing Code.

- c. Quality and Quantity of Water. The Port will supply treated water to Owner from the Burbank Well through the Water System to the Delivery Point. In accordance with the information provided in the Service Application, the Port will use commercially reasonable efforts to supply a sufficient quantity of water for in-building commercial/industrial and domestic use to the Delivery Point based on a _____ potable water service line. Owner will not use water in excess of the foregoing quantities without written approval of the Port. Treated water supplied will meet drinking water quality standards at the Delivery Point. Owner is responsible for the quality of water distributed at the tap. The Parties agree to share water quality sampling and analyses with each other to ensure safe and reliable water supply.

- d. Increase or Decrease in Water Supply Demand.
 - i. *Owner Request for Increased Water Supply.* In the event that Owner's water supply-demand increases or is expected to increase from the information provided in the Service Application, the Owner may request additional water supply quantity from the Port, and the Port shall consider such request, within its sole discretion, and shall respond in a timely manner. A new Service Application and an amendment to this Agreement may be required.
 - ii. *Sustained Decrease in Water Use.* In the event that Owner uses substantially less water than stated in the Service Application (Exhibit B) for a period of 24 consecutive months such that a smaller water meter would serve Owner's actual water demand, then the Port may, consistent with the Port's adopted rules and regulations and at the Port's cost and expense, replace the water meter(s) on Owner's

Property to conform Owner's water supply quantity, provided in Section 5(c) above, with Owner's actual water demand.

- e. Water Meters. All potable water delivered under this Agreement is required to be metered. The Port will procure and install all meters at Owner's cost, which costs will be included in the monthly utility invoice. Meter(s) shall be placed in the location(s) shown on Exhibit C. The meter(s) shall at all times remain on the Property for the purpose of measuring the quantity of water used by Owner. Meter(s) shall at all times be available for inspection by the Port, and Owner hereby grants the Port an ingress/egress easement across the Property for the purpose of installing, reading, maintaining, repairing, and replacing said meter(s). In the event damage to a meter is caused by the negligence of Owner, Owner shall promptly reimburse the Port for such repair or replacement costs.

- f. Fire Flow. Owner is responsible for ensuring that the design fire flow for the Port's Water System is adequate for Owner's proposed development and construction. If Owner seeks fire flow greater than the current system design, Owner may request that the Port improve the Water System to provide increased fire flow by submitting a request in writing to the Port. The Port will determine, in its sole discretion, whether to pursue the requested water system improvements to increase fire flow and approve Owner's request. Owner shall not apply for or seek approval of proposed uses or development of the Property requiring fire flow greater than the system design fire flow, unless and until the Port has approved in writing and implemented the requested water system improvements to increase fire flow.

- g. Charges.
 - i. Potable Water - Connection Charge. Before the Port extends and connects potable water service to the Property, a potable water connection fee of
must be paid by Owner. After payment, the potable water service connection to the Property will remain active and in effect so long as it does not lapse or go unused as provided in Section 6(d) below.

 - ii. Potable Water - Capital Facilities Charge. Before the Port extends and connects potable water service to the Property, a potable water capital facilities charge fee of
After payment, the potable water service connection to the Property will remain active and in effect so long as it does not lapse or go unused as provided in Section 6(d) below.

 - iii. Fire Suppression Water - Capital Connection Charge (If applicable). Before the Port extends and connects fire suppression water services to the Property, a fire suppression water service connection fee of

After payment of the fire suppression water capital connection charge, the fire suppression water service connection(s) to the Property will remain active and in effect so long as it does not lapse or go unused as provided in Section 6(d) below.

- iv. Rates. A monthly service fee shall apply to all water service provided by the Port. The current water service fees in effect are attached as Exhibit F. The Port may increase water service fees. Prior to any proposed increase, the Port shall provide each Owner with at least 30 days prior notice, along with the opportunity to attend a public meeting to provide input prior to any final action being taken by the Port.

h. Limitations and Requirements.

- i. Water transmission pipeline(s) must be so arranged on the Property so that water is supplied directly to each structure on the Property, and each must be controlled by a separate stopcock placed within or near the main water transmission pipeline.
- ii. Transmission pipelines for fire protection purposes must be fitted with such fixtures, only as are needed for fire suppression, and entirely disconnected from those used for other purposes. If fire suppression fixtures are used for purposes other than fire suppression, Owner may be subject to penalty or held in default of this Agreement, at the option of the Port.
- iii. Water may not be drawn from fire hydrants by a person other than the fire department without the prior written approval of the Port.

- i. Water Conservation and Regulation of Heavy Use. Owner agrees to use best practices in the smart use of water for irrigation of lawns and landscaping and other outdoor uses of water. Owner agrees to use best practices for efficient use of water for indoor commercial / industrial purposes. Owner agrees to comply with the Port's water shortage plan, as it may be amended from time to time and approved by the state Department of Health or other agency. In the case of a physical, regulatory, legal, contractual, or other restriction on the amount water that can be drawn from the Burbank Well and supplied to Burbank customers including Owner, the Port reserves the right, upon prior written notice to Owner, to further regulate or suspend the supply or use of water for irrigation or outdoor purposes and to regulate or reduce the supply or use of water for indoor commercial / industrial purposes.

- j. Cross-Connection Control Program (Backflow Prevention). On an annual basis, Owner shall have the backflow assembly equipment ("downstream" of the Delivery Point) tested by a licensed plumber for compliance with legal requirements. Owner shall be responsible for all costs of the test and any repairs that are required. A copy of the test results, along with a certification from a licensed plumber that the backflow assembly equipment complies with

legal requirements and is in good working condition, shall be provided to the Port no later than September 30 of each year.

- k. Emergency Procedure In Case of Backflow Contamination. In the event backflow contamination is detected, the Port will notify Owner, and all connections will be tested if necessary to find the source of contamination. The Department of Health and other governing agencies will be notified of the incident. The source of the contamination will be investigated prior to flushing the Water System so that the contamination may be detected through sampling. The suspected source of the contamination will be isolated and the affected owner(s) notified. The Water System will be cleaned and disinfected before returning to active use. Once the source of contamination has been identified, such owner shall be responsible for reimbursing the Port for expenses incurred, including, but not limited to, the provision of alternative sources of treated water.
- l. Additional Rules and Regulations. The Port may, from time to time, implement additional rules and regulations with respect to use of the Water System and delivery and use of treated water or fire flow.

6. GENERAL PROVISIONS GOVERNING WATER AND SEWER SERVICE.

- a. Maintenance; Repair.
 - i. The Port shall be responsible for maintenance of the Sewer System and Water System, including that portion of the water and sewer transmission pipeline(s) not located on the Property up to the Delivery Point or Acceptance Point, as applicable, and the water and sewer meter(s) and monitoring equipment. Only Port personnel or those who have received permission from the Port, including the City of Pasco for sewage and wastewater corrective actions, shall be allowed to do any work on such facilities.
 - ii. Owner shall be responsible, at its expense, for maintenance or replacement of the portion of the water and sewer pipeline(s) and associated facilities located on its Property up to the Delivery Point or Acceptance Point, as applicable, including, but not limited to, keeping the water and sewer transmission pipeline(s) and all backflow assembly equipment clean and serviceable, and protecting transmission lines and backflow assembly equipment from freezing. In addition, Owner is responsible for repairing defective or leaking pipes or facilities on the Property. Owner shall be responsible for all damage associated with leaks or breaks in the transmission pipelines resulting from Owner's actions, omissions, or facilities. Owner shall be liable for any work by its employees, agents, or contractors if such work results in any damage to the Water System or Sewer System.

- b. Stormwater. Owner shall not cause, allow, or suffer any stormwater to enter or be conveyed to the Sewer System or the sewers or drains or other facilities on the Property that are connected to the Sewer System. Owner shall at all times retain and disperse stormwater on the Property without causing or allowing any stormwater to enter the Sewer System.
 - c. Prohibitions. Owner is prohibited from performing or otherwise undertaking the following actions, unless prior written consent is given by the Port: (A) making connections or alterations to the Port's water pipelines or otherwise to the Port's Water System or Sewer System, (B) connecting transmission pipelines to the Port's main transmission pipelines when such lines have been disconnected or turned off by the Port, or (C) turning water or sewer service to the Property on or off. Violations of such prohibitions shall be subject to the default provisions of Section 8.
 - d. Lapsed or Unused Connections. On all water and sewer service connections that go unused for a period of twelve (12) months or more, the Port reserves the right to consider the same obsolete and remove the service, at the Port's option, or to require payment of new connection charges. Where Owner has a definitive plan for a future development, the Port and Owner may agree in writing for continuation of an existing water or sewer connection that goes unused for a period of twelve (12) months or more.
 - e. Reliability of Service. The Port will operate and maintain the Water System and the Sewer System in a manner consistent with applicable industry standards and legal requirements in order to provide reliable service to Owner. However, Owner understands and agrees that the Port makes no warranty or guarantee as to pressure, quantity, continuity of service, or otherwise of water supply. The Port shall not be liable for losses or damages arising from a deficiency or failure to provide water or sewer service due to the failure of or accidents involving the Water System or Sewer System or its respective infrastructure or equipment, changes in law, uncontrollable forces, or unforeseen or unavoidable events, which include but are not limited to accidents, system or equipment malfunctions, acts of God, fire, flood, earthquake, other extreme weather event or natural disaster, acts of war, insurrection or riot, physical or legal unavailability of groundwater, litigation preventing performance, or an order of a governmental authority, regulatory agency, or court of competent jurisdiction limiting or preventing performance. In addition, Owner understands and agrees that the Port makes no warranty or guarantee as to continuity of service or otherwise of sewage and wastewater acceptance and treatment by the City of Pasco under the Pasco Interlocal Agreement.
7. **INDEMNIFICATION**. To the fullest extent permitted by law, Owner releases and agrees to indemnify, defend and hold harmless each of the Port Indemnified Parties (defined below) from and against any claim, cause of action, liability, damage, loss,

or expense (including but not limited to attorneys' fees and expenses) arising out of or resulting from Owner's default or breach of this Agreement, from Owner's violation or non-compliance with the City of Pasco's municipal code or requirements or standards, and from damage to the Port's Sewer System or Water System to the extent caused by the acts or omissions of Owner. For purposes of this paragraph, "Owner" means and includes Owner's officers, employees, agents or contractors. "Port Indemnified Parties" means, individually and collectively, the Port, its elected officials, officers, employees, and agents. Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each Party specifically and expressly waives any immunity it may have under Washington State Industrial Act, Title 51 RCW, and acknowledges that this waiver was mutually negotiated by the Parties herein. In no event shall either Party's obligations hereunder be limited to the extent of any insurance available to or provided by the obligated Party.

8. DEFAULT.

- a. Nonmonetary Default. If Owner fails to comply with any nonmonetary provision herein, then the Port may, upon fifteen (15) days' prior written notice to Owner, proceed with the shutoff remedy provided for in Section 9, or, at the Port's discretion, shall have the right, but not the obligation, to cure the default. The foregoing right to cure shall not be exercised if within the fifteen (15) day notice period (i) Owner cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, Owner begins to cure such default within such time period and diligently and continuously pursues such cure to completion. The fifteen (15) day notice period shall not be required if, using reasonable judgment, the Port deems that an emergency exists which requires immediate attention. In the event of such an emergency, the Port shall give whatever notice to Owner as is reasonable under the circumstances. Owner hereby grants to the Port a non-exclusive easement over, across and under any and all parts of the Property for all purposes reasonably necessary to enable the Port (and its agents, contractors, or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Agreement that Owner is obligated to perform but has failed to perform after notice and the opportunity to cure.
- b. Monetary Default. Late payments may accrue at a compound interest fee of 1.5% per month. In the event any water service fee is three (3) months delinquent, the Port may proceed with the shutoff remedy provided for in Section 9.
- c. Property Lien. All charges and fees provided for under this Agreement shall be deemed to be levied on the Property itself, and the Port shall have a lien on any and all delinquent and unpaid charges and fees, including penalties and interest thereon. In the event that Owner has not cured a monetary event(s) of default or breaches of this Agreement, the Port reserves the right to and may

impose and record a lien against the Property. Owner hereby consents to the Port's recording of such a lien against the Property.

9. SUSPENSION OR SHUTOFF OF SERVICES.

- a. Temporary Shutoff at Request of Owner. To temporarily discontinue either water or sewer service, or both, for a period of not less than one month, Owner must give at least 30 days prior written notice to the Port. All current charges must be paid by the requested shut-off date. Prior to service being turned back on, Owner must provide written notice and pay a reconnection fee to the Port.
- b. Shut off for Violation. If Port personnel determine that Owner has allowed water to be wasted by imperfect or leaking stops, valves, pipes, closets, faucets or other fixtures, or allowed a fixture to run open, or is using water or wastewater service for a different use than what is named in the Service Application, including, the introduction of different quantity or quality of sewage or wastewater flows, or for any other violation of this Agreement (including, but not limited to, monetary violations), then the Port may, at its discretion, turn off all water service to the Property. Service will not be turned on until Owner has cured all violations and Owner has reimbursed the Port for expenses it incurred to cure such violations, if applicable.
- c. Shutoff for Repairs. The Port may at any time, after prior notice to Owner, shut off the connection to the main water or sewer transmission lines for repairs, extensions or other necessary purposes. The Parties will coordinate in order to schedule such work to minimize potential disruption to Owner and to reduce the costs of such work. Persons having boiler supply pressure from the main transmission lines are cautioned against danger of explosion or collapse after such notice is given.
- d. Emergency Shutoff. Notwithstanding any other the provisions of this Agreement, the Port may immediately shut off all water or sewer service whenever a condition is detected that constitutes a danger to the Water or Sewer System or to public health, safety or welfare. Such service shall remain off until said condition is cured.
- e. No Liability. The Port will not be liable for any loss or damage arising from or relating to the shutoff of service pursuant to this Section, including, but not limited to, any damage to or caused by boilers located on the Property.
- f. No Obligation to Provide Alternative Services. In the event of any of the foregoing or otherwise, the Port shall have no obligation to provide alternative water or sewer services to Owner, including from the Port's other water sources.

10. PAYMENT FOR SERVICES. The Port will invoice Owner on a monthly basis for services provided. Payment is due within 30 days from the date of the invoice. In the event Owner fails to pay an invoice during the allotted timeframe, then Owner shall be in default of this Agreement and the Port may pursue any and all remedies available to it under this Agreement.

11. NOTICE. All notices hereunder shall be in writing and shall be considered given either (a) when delivered in person, (b) upon receipt when delivered by a reputable overnight delivery service to the address given below, (c) upon receipt if sent via facsimile during the Port’s regular business hours, or the next business day if sent outside of such hours, or (d) one business day after receipt if sent via electronic mail (“e-mail”) to an e-mail address listed below or specifically designated by any party as an e-mail address to which notice can be sent, or (e) upon receipt if sent by mail, registered or certified, return receipt requested, in a sealed envelope or container postage and postal charges prepaid, addressed by name and addressed to the party or person intended as follows:

Notice to the Port of Walla Walla:

Name:	Port of Walla Walla		
Attn:	Patrick H. Reay, Executive Director		
Address:	310 "A" Street, Walla Walla, WA 99362		
Phone:	(509) 525-3100	Cell:	509-520-8301
Email:	pr@portwallawalla.com		

With a copy to:

Name:	Port of Walla Walla		
Attn:	Paul Gerola, Economic Development Director		
Address:	310 "A" Street, Walla Walla, WA 99362		
Phone:	(509) 525-3100	Cell:	509-520-8304
Email:	pg@portwallawalla.com		

Notice to Owner:

Name:			
Attn:			
Address:			
Phone:		Cell:	
Email:			

With a copy to:

Name:			
Attn:			
Address:			
Phone:		Cell:	
Email:			

Each Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both.

12. TERMINATION.

- a. Owner's Termination for Convenience. Owner may terminate this Agreement for convenience, provided that Owner shall give thirty (30) days prior written notice to the Port in advance of the termination date. The Port will disconnect the Water System and Sewer System upon the requested shutoff date. Owner shall pay all fees due and owing within thirty (30) days of the requested shutoff date.
- b. Port's Termination for Owner's Default. The Port may terminate this Agreement in the event that Owner is in default and has failed to cure the default after notice and opportunity to cure as provided in Section 8 above.
- c. Port's Termination Relating to Pasco Interlocal Agreement. The Port may terminate this Agreement for Owner's failure, after receiving notice, to allow or to implement corrective action(s) to comply with the requirements of the Pasco Interlocal Agreement or standards of the City of Pasco. The Port may terminate this Agreement, with 90 days' advance notice to Owner, in the event that the City of Pasco or the Port gives notice to terminate the Pasco Interlocal Agreement.

13. DISPUTE RESOLUTION, JURISDICTION, AND VENUE

- a) Disputes Regarding Sewer and Wastewater. Consistent with the Pasco Interlocal Agreement, jurisdiction and venue shall lie in Franklin County superior court for any dispute regarding the Port's or the City of Pasco's wastewater standards or any actions taken by the City of Pasco pursuant to the Pasco Interlocal Agreement and City of Pasco municipal code.
- b) Other Disputes. Except for disputes covered in Section 13 (a) above, jurisdiction and venue for all disputes between the Parties arising under this Agreement will be in Walla Walla County superior court. In the event that such dispute(s) results in legal action being taken, declaratory or otherwise, the prevailing Party shall be entitled to recovery of all costs, including reasonable attorney's fees, which costs shall be determined and taxed by the trial or appellate courts, as applicable, as part of the costs of such action. Before commencing any legal action in Walla Walla County superior court, the Parties agree to meet and confer regarding any disagreement or dispute, and the Party raising any dispute or alleging a breach of this Agreement shall first send the other Party a letter describing the identity and nature of the issues; provided, however, that such a meeting is not required for urgent disputes or in the event that a meeting is not held after the Parties have attempted, in good faith, for 30 days to schedule one.

14. MISCELLANEOUS PROVISIONS

- a. Governing Law. This Agreement, questions relative to its execution, validity, interpretation, and performance, and any and all disputes arising out of this Agreement shall be governed by the laws of the State of Washington.
- b. No Special Damages. Notwithstanding any other provision of this Agreement, the Port shall not be liable under or pursuant to this Agreement for indirect, incidental, special, exemplary, punitive, or consequential damages, including but not limited to damages for lost profits, revenues or benefits.
- c. Entire Agreement. This Agreement, including all agreements and documents incorporated herein, constitutes the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement and its provisions may be amended, supplemented, changed, waived, discharged, modified or terminated only by a writing signed by each of the Parties.
- d. Assignment and Successors. This Agreement is specific to the Property and shall run with the land and be binding on and inure to the benefit of the Parties' successors and assignees. With consent of the Port, which shall not be unreasonably denied or delayed, Owner may assign this Agreement to a purchaser of the Property. The Port may require a successor or assignee of Owner to sign and deliver a new service application or Burbank utility agreement as a condition of assignment. Any assignment made in violation of this provision shall be null and void.
- e. Severability. Should any provision(s) of this Agreement be found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless the stricken provision is an essential part of the consideration supporting this Agreement or if the absence of the stricken provision would materially alter the intent of the Parties.
- f. Remedies. The rights and remedies available under this Agreement, including without limitation specific performance, or otherwise available at law shall be cumulative of all other rights and remedies and may be exercised concurrently or successively.
- g. No Waiver. No waiver of any provision of this Agreement shall be effective unless made in writing and signed by the Parties. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by either Party to exercise any right or privilege hereunder shall be deemed a waiver of such Party's rights or privileges hereunder or shall be deemed a waiver of

such Party's rights to exercise the same at any subsequent time or times hereunder.

- h. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer any rights, benefits, or obligations upon any person other than the Parties hereto and their respective successors and permitted assigns.
- i. Counterparts. This Agreement may be executed in one or more counterparts.

IN WITNESS WHEREOF, the authorized representatives of the Parties have duly executed this Agreement to be effective as of the last date stated below.

PORT OF WALLA WALLA

By:

Name:

Title:

Date:

OWNER

By:

Name:

Title:

Date:

EXHIBIT A

LEGAL DESCRIPTION OF OWNER'S PROPERTY

[Ex. A-1 is a vicinity map of the Property]

BURBANK BUSINESS PARK
(Property East of 2nd Avenue)

LEGAL DESCRIPTION OF PROPERTY

LOTS 1 THROUGH 97 OF THE WALLA WALLA COUNTY BINDING SITE PLAN (BSP2012-001) FOR THE BURBANK BUSINESS PARK, RECORDED ON FEBRUARY 22, 2016 UNDER WALLA WALLA COUNTY AUDITOR FN 2016-01320, SAID REAL PROPERTY LOCATED IN SECTIONS 1 AND 2, TOWNSHIP 8 NORTH, RANGE 30 EAST, WILLAMETTE MERIDIAN, WALLA WALLA COUNTY, WASHINGTON.

(A CORRECTED LEGAL DESCRIPTION AND THE TAX PARCEL NUMBER(S) FOR THE SUBJECT PROPERTY TO BE PROVIDED BY THE TITLE COMPANY.)

BURBANK INDUSTRIAL PARK
(Property West of 2nd Avenue)

LEGAL DESCRIPTION OF PROPERTY

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M. WALLA WALLA COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 2, THENCE SOUTH 89°41'23" WEST ALONG THE NORTH LINE OF SAID SECTION AS SURVEYED BY THE U.S. BUREAU OF RECLAMATION, AND SHOWN ON THEIR LAND CLASSIFICATION MAP DATE FEBRUARY 3, 1941, FOR 1,359.9 FEET TO WHAT WAS THE WEST LINE OF OLD STATE HIGHWAY No. 3 AND IS NOW THE WEST LINE OF SECOND STREET PROJECTED; THENCE SOUTH 00°58'51" WEST ALONG THE SAID WEST LINE 2,925.78 FEET; THENCE NORTH 89°01'09" WEST 75.00 FEET TO THE WEST LINE OF THE RAILROAD RIGHT-OF-WAY AND THE TRUE POINT OF BEGINNING; THENCE SOUTH 00°58'51" WEST ALONG THE SAID RAILROAD RIGHT-OF-WAY 511.60 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 397.07 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY 119.94 FEET; THENCE NORTH 89°01'09" WEST 422.02 FEET; THENCE NORTH 0°58'51" EAST 500.00 FEET; THENCE SOUTH 89°01'09" EAST 130.00 FEET; THENCE NORTH 73°19'50" EAST 230.87 FEET; THENCE NORTH 00°58'51" EAST 60.00 FEET; THENCE SOUTH 89°01'09" EAST 90.00 FEET TO SAID POINT OF TRUE BEGINNING.

TOGETHER WITH AND SUBJECT TO EASEMENTS, RESERVATIONS, COVENANTS, AND RESTRICTIONS OF RECORD AND IN VIEW.

EXHIBIT B
OWNER'S SERVICE APPLICATION
Burbank Business Park & Burbank Industrial Park
Water & Sewer Service Application

Applicant's Service Address:	
Applicant Name:	
Applicant's Billing Address:	
Applicant's City, State, Zip:	
Applicant's Phone #:	
Applicant's Email:	

1. The undersigned Applicant hereby applies for water & sewer connections to the above-described Service Address. This Application does not constitute acceptance or an agreement between the Port of Walla Walla (hereinafter referred to as the "Purveyor") and the Applicant. In the event that the Purveyor intends to approve this Application, the Applicant and the Purveyor will enter into an agreement (hereinafter referred to as the "Burbank Utility Agreement") that will provide all terms and conditions for service.

2. The Applicant is the _____ of the above-described property or the authorized agent of the Applicant.

3. As a condition of the Purveyor providing and continuing services to the above-described property, the Applicant will comply with:
 - (a) All provisions of the Burbank Utility Agreement, or latest revision thereof;
 - (b) Any other such future rules and regulations that govern the Purveyor's water and sewer system; and
 - (c) Pay water and sewer bill within 30 days from the date of billing.

Applicant is required to fill out the following information:

Applicant's General Business Information

Commercial Use
 Industrial Use
 Other _____

Business Operation:

Applicant's Water Information

Applicant's Water Usage

Building Use:	Gallons per minute:	GPM	Gallons per day:	GPD
Irrigation Use:	Gallons per minute:	GPM	Gallons per day:	GPD
Fire Suppression:	Gallons per minute:	GPM		

❖ Allowable Capacity (GPM): ¾"=30 GPM, 1"=50 GPM, 1.5"=100 GPM, 2"=160 GPM, 3"=320 GPM, 4"=500 GPM

❖ Fire Suppression is 2,000 GPM at 2 HRS

Applicant's Sewer Information

Applicant's Sewer Usage:

Building Use: Average gallon flow per day: GPD

Applicant's Sewer Characteristics:

Provide expected wastewater characterization. Include the following chemical constituents: Total Suspended Solids (TSS), Total Nitrogen (TN), Bio-Chemical Oxygen Demand (BOD), Chromium, Copper, Lead, Mercury, Molybdenum, Nickel, Zinc, pH and any other chemical constituents.

Applicant's Water & Sewer Requirements

Begin Water/Sewer Service:

Water Meter Size (inches):

Sewer Service Size (inches):

Fire Flow Service Size (inches):

Attachments received by Applicant (initial):

1. **Water Rates/Charges**
2. **Service Connection Information**
3. **Water Service Policy**
4. **Water & Sewer Service Rates/Charges**
5. **Pasco Sewer & Pretreatment Agreements**

Applicant's Signature: _____

Date:

For Purveyor Use Only:

<u>Items</u>	<u>Date</u>
Water & Sewer Service Application received	_____
Connection fees received by Applicant	_____
Risk assessment completed; by _____ <i>(Insert Name of CCS).</i>	_____
Applicant notified of requirement for Backflow Prevention Assembly (BPA)	_____
Backflow Prevention Assembly (BPA) installation approved	_____
Backflow Prevention Assembly (BPA) test report accepted	_____
Backflow Prevention Assembly (BPA) information entered into database	_____

Port of Walla Walla, 310 A Street, Walla Walla, WA 99362

EXHIBIT C
LOCATION OF SEWER ACCEPTANCE POINT

- ⑥ CONNECT TO EXISTING SEWER LINE. CONTRACTOR TO POT HOLE AND VERIFY DEPTH AND LOCATION. CONTACT ENGINEER IF DIFFERENT.

EXHIBIT D

LOCATION OF DELIVERY POINT AND WATER METERS

- ⑭ CONNECT TO EXISTING WATER METER FOR DOMESTIC SERVICE. CONTRACTOR TO POTHOLE AND VERIFY DEPTH AND LOCATION. CONTACT ENGINEER IF DIFFERENT.
- ⑮ (1) 12"x8" REDUCER. CONNECT TO EXISTING 12" WATER LINE FOR FIRE MAIN. CONTRACTOR TO POTHOLE AND VERIFY DEPTH AND LOCATION. CONTACT ENGINEER IF DIFFERENT.

EXHIBIT E
SEWER TREATMENT FEE SCHEDULE

PORT OF WALLA WALLA
BURBANK SEWER TRANSMISSION SYSTEM

Service Area

The below policy & rates apply to the Port's Burbank Industrial and Business Parks only. While the Port will consider providing sewer transmission services to other properties in the Burbank area, it shall be on separately negotiated terms and conditions.

Customer Notification Requirement

If a proposed customer wants to connect to the Port's sewer system it shall provide written notice to the Port. The letter shall confirm the customer's willingness to comply with these policies and charges.

Design Fee

The Port will retain an engineering firm to provide the design services necessary to connect the customer to the Port's small diameter pressure sewer transmission line. The design fee will be paid by the customer based on actual costs; however, shall not exceed \$5,000. The design fee shall be paid by the customer prior to proceeding with the construction phase.

Construction Charges

A Port contractor or the customer's licensed contractor can install the sewer lateral and if needed the pump station. Cost of construction including pump(s), sewer piping, valves, electrical and septic tank decommissioning shall be the responsibility of the customer. If the customer installs the pressure sewer line, the Port will need to inspect the work. Port inspection costs to be paid by the customer. If the pressure sewer line is installed by a Port hired contractor, the customer shall reimburse the Port within 30 days from the date the work is completed.

Note: All customers in the Port's Industrial Park (west of 2nd Avenue) will need to pump its sewer into the Port's system.

Ownership of Small Diameter Pressure Sewer Lateral

Customers that own their property

The customer will own all sewer improvements on their property. The Port will own sewer improvements located on Port Property.

Customers on leased Port property

The customer will own the sewer pump system (if required), valves, and electrical systems. The customer will be responsible for its upkeep and replacement. The Port will own and maintain the sewer line lateral.

Capital Connection Charge

Charged based on size of water meter that serves the property. The one-time capital connection charge is due in full prior to construction.

Water Meter Size	Capital Connection Charge
¾"	\$6,000
1"	\$8,000
1.5"	\$10,000
2"	\$12,000
3"	\$15,000
4"	\$25,000
6"	\$40,000
8"	\$75,000
10"	\$125,000

Monthly Sewer Rates

Categories	Monthly Base Rate	Consumption Fee*
Commercial & Industrial	\$40.00	\$2.15 per 100 cf
Motel	\$10.00 per unit	\$2.15 per 100 cf

* Consumption fee applies to each 100 cf of water used.

Sewer Services Agreement

Port and customer will enter into a sewer services agreement detailing the on-going sewer services to be provided by the Port.

Adoption

These policies and charges were approved by the Port of Walla Walla Commission on November 12, 2014. The Port Commission reserves the right to modify these policies and charges.

EXHIBIT F
WATER FEE SCHEDULE

PORT OF WALLA WALLA
BURBANK WATER SYSTEM

Service Area

The below policy & rates apply to the Port's Burbank retail water service area only. While the Port will consider providing water service within its wholesale water service boundary, it shall be on separately negotiated terms and conditions.

Customer Notification Requirement

If a proposed customer wants to connect to the Port's water system it shall provide written notice to the Port. The letter shall confirm the customer's willingness to comply with these policies and charges.

Design Fee

The Port will retain an engineering firm to provide the design services necessary to connect the customer to the Port's water system. The design fee will be paid by the customer based on actual costs; however, shall not exceed \$5,000. The design fee shall be paid by the customer prior to proceeding with the construction phase.

Construction Charges

A Port contractor or the customer's licensed contractor can install the water line lateral. Cost of construction shall be the responsibility of the customer. If the customer installs the waterline, the Port will need to inspect the work. Port inspection costs to be paid by the customer. If the water line is installed by a Port hired contractor, the customer shall reimburse the Port within 30 days from the date the work is completed.

Ownership of Water Line Lateral

Customers that own their property

The customer will own all water line improvements on their property. The Port will own water line improvements located on Port Property.

Customers on leased Port property

The customer will own the water line past the water meter. The Port will own the water line lateral up to the water meter and the water meter.

Potable Water - Capital Connection Charges	
Potable Water - Capital Connection Charges represent the average cost for meter/vault installation, service line (up to 50 feet) and mainline tap and are Port installed.	
<u>Meter Size (Inches)</u>	<u>Capital Connection Charge</u>
3/4	\$940
1	\$1,004
1 1/2	\$2,245
2	\$3,400
3	\$5,100
4	\$6,200
6	\$8,900
8	\$13,900

Potable Water - Capital Facilities Charges		
Capital facilities charges (CFCs) recoup part of the value of the Port's capital investment (excluding grants) and are used for capital expansion and replacement.		
<u>Meter Size (Inches)</u>	<u>Allowable Capacity (gpm)</u>	<u>Percent Recovery (Values Rounded, Thousands)</u>
3/4	30	\$8,000
1	50	\$13,000
1 1/2	100	\$26,000
2	160	\$41,000
3	320	\$82,000
4	500	\$128,000

Note: Port Commission approved Connection and Capital Facility Charges on August 27, 2015.

Water Main Extensions

Water main extensions (minimum 8-inch diameter) will be paid for by the developer, either directly or through the Port. The Port has the option of requiring a main to be oversized. Oversizing will be paid for by the Port. The Port will entertain a latecomer's fee arrangement for future connections to the main.

Monthly Water Rate Schedule

Commercial & Industrial Rates	
\$0.80 Per 100 Cubic Feet Plus Monthly Base Fee	
Meter Size	Monthly Base Fee
1 inch or less	\$23.00 + Tax = \$25.95
1 ½ inches	\$47.25 + Tax = \$53.32
2 inches	\$72.00 + Tax = \$81.25
3 inches	\$118.00 + Tax = \$133.43
4 inches	\$184.25 + Tax = \$207.91
6 inches	\$331.00 + Tax = \$373.50
8 inches or larger	\$480.00 + Tax = \$541.63
Residential Rates	
\$0.70 per 100 Cubic Feet Plus Monthly Base Fee	
Meter Size	Monthly Base Fee
1 inch or less	\$23.00 + Tax = \$25.95
1 ½ inches	\$47.25 + Tax = \$53.32
2 inches	\$72.00 + Tax = \$81.25
3 inches	\$118.00 + Tax = \$133.43
4 inches	\$184.25 + Tax = \$207.91
6 inches	\$331.00 + Tax = \$373.50
8 inches or larger	\$480.00 + Tax = \$541.63

Fire-Water Supply Lines (Non-Metered) - Ready to Serve Charge

Fire Suppression Water - Capital Connection Charges		
Fire Line Size (Inches)	Capital Connection Charge (1)	Capital Connection Charge (2)
6	\$5,000	\$7,500
8	\$7,500	\$11,250
12	\$10,000	\$15,000
(1) Applicable during the installation of potable water service.		
(2) Applicable after potable water service has been installed.		
Fire Suppression Water - Capital Connection charges represent the average cost for a vault installation, service line (up to 50 feet) and mainline tap and are Port installed.		
Monthly - Ready to Serve Fire Suppression Water Charge		
FireLine Size	Monthly Fee	
6 inch	\$25.00 + tax = \$28.21	
8 inch	\$35.00 + tax = \$39.49	
12 inch	\$75.00 + tax = \$84.63	
Port reserves the right to meter all fire water lines and charge a consumption fee.		

High Dock - Water Use Fee
Day use fee is \$50.00 per day
Water Drawn From Hydrants
\$75.00 Hook up fee. Plus consumption fee of \$0.80 per 100 cubic feet. A Port approved meter and backflow device must be installed by requesting party.

Notes:

- Water fees may be subject to a Washington State Leasehold Tax of 12.84%.
- Water rates first adopted by Port Commission on July 24, 2008.
- Water rate increase approved by Port Commission on July 26, 2012, to become effective on October 1, 2012. Rate increase was limited to consumption fees only. Commercial/industrial rates went from \$0.75 to \$0.80. Residential rates went from \$0.65 to \$0.70.
- August 27, 2015, the Port Commission approved amended Water Fee Schedule.
- March 24, 2016, the Port Commission approved amended Water Fee Schedule.