

**AMENDED INTERLOCAL AGREEMENT BETWEEN
CITY OF GEORGE AND GRANT COUNTY PORT
DISTRICT NO. 1 FOR THE FINANCING, DESIGN, AND
CONSTRUCTION OF THE CITY OF GEORGE WATER
SYSTEM EXTENSION TO INDUSTRIAL PARK NO. 5**

THIS AGREEMENT is made and entered into by and between the City of George (“City”), a non-charter code city, and Grant County Port District No. 1 (“Port”), a port district. The parties are authorized to enter into an interlocal agreement pursuant to Chapter 39.34 RCW in order to jointly accomplish the improvements to the City’s water utility system.

RECITALS

1. The Port created and developed an industrial development district pursuant to Chapter 53.25 RCW entitled Industrial Park No. 5 for the purpose of establishing sites for future business and industry within the City’s incorporated limits;
2. The City owns and operates a water distribution system for providing potable water to customers within the City’s incorporated limits (the “System”) which is not extended to and, therefore, does not presently service Industrial Park No. 5;
3. In order to expand the System to enable the City to make potable water available to Industrial Park No. 5, and thereby enable its development for business and industry, the Port and the City previously applied for and were awarded a SIP grant and loan package to construct a municipal well on Lot 2 of Industrial Park No. 5 (“Lot 2”);
4. The Port and the City previously entered into an interlocal agreement dated November 14, 2014, (“2014 Agreement”) pursuant to which the Port agreed to construct the municipal water well upon Lot 2, using the SIP grant and loan package to finance the same, and upon completion of such construction, sold Lot 2, together with the municipal water well and other improvements constructed thereon, to the City on contract for a sales price \$40,000;
5. Pursuant to the 2014 Agreement, the Port is solely responsible for the repayment of the SIP loan;

6. Ancient Lake Wine Company, LLC (“ALWC”) has purchased 28.30 acres of Industrial Park No. 5 (the “ALWC Property”) from the Port;
7. The Port still owns 30.46 acres of Industrial Park No. 5;
8. Development activity and interest in Industrial Park No. 5 has increased significantly since the execution of the 2014 Agreement, including the planned expansion of the Ancient Lakes Wine Company (“ALWC”) facility, rendering the current well capacity of 100 gpm on Lot 2 insufficient to meet the Port’s intended future industrial development of Industrial Park No. 5;
9. The City is currently unable to issue a SEPA determination or issue ALWC a certificate of occupancy (“CO”) for its bottling facility/warehouse without proof of adequate water supply for domestic and fire flow use, and the current well capacity on Lot 2 is insufficient to meet ALWC’s proposed domestic and fire flow requirements;
10. The insufficient water supply to Industrial Park No. 5 prompted the parties to investigate connecting the Industrial Park No. 5 water well and improvements to the City’s System;
11. The City engaged the services of its engineer, Gray & Osborn (“G&O”), to design the Industrial Park No. 5 Water System Improvements (“Improvements”) in January, 2017, at a cost not to exceed \$130,000.00, which was to be paid from the SIP funds, to install a 16” diameter water transmission main line from the City’s System to Industrial Park No. 5;
12. G&O’s total estimated project costs of the Improvements are \$1,500,000.00, which amount the City requires in additional funding revenues in order to finance construction of the Improvements;
13. The City is approved for a state legislative appropriation in 2018 in the amount of \$679,000.00 ;
14. The City also applied for and is offered a \$300,000 grant and \$1,050,000 loan from CERB;
15. The City has also received a SIP Grant of \$100,000, a second SIP Grant of \$100,000 and a SIP Loan of \$50,000;

16. The Port and ALWC met with the City on January 8, 2018, and requested that the City accommodate ALWC by granting a conditional or temporary CO following the completion of SEPA, permitting ALWC to occupy its permitted facilities and buildings pursuant to a conditional/temporary CO pending completion of the Improvements;
17. Contingent on the City's receipt of the legislative appropriation in the net amount of \$679,000 on or before June 1, 2018, the Port and ALWC's willingness to contribute \$421,000 towards the estimated cost of the Improvements of \$1,500,000, and the Port and ALWC's willingness to pay excess costs of the Improvements over and above \$1,500,000, and the City's receipt of the necessary permits, easements and/or authorizations from the USBR, WSDOT, and property owners, the City is willing to proceed with construction of the Improvements;
18. The Port and ALWC shall execute a separate agreement between them regarding ALWC's participation in the funding and construction of the Improvements;
19. The City is willing to immediately accommodate the Port and ALWC's request for a conditional/temporary CO contingent on the Port's and City's execution of this Interlocal Agreement and the City's and ALWC's execution of a separate agreement identifying the conditions of granting the conditional/temporary CO which shall include but not be limited to ALWC's providing a 400,000 gallon lagoon as a source for its temporary fire suppression system that will provide access/turnout for the Fire District connection that is within one hundred feet (100') of its bottling facility/warehouse, and ALWC's agreement to hold the City and Grant County Fire District No. 3 harmless for any and all claims relating to its use and occupancy of its facility from issuance of the conditional/temporary CO until such time as the Improvements are installed and ALWC's fire suppression system is connected thereto and/or the project is abandoned, and ALWC's express agreement to hold the City harmless for any and all claims relating to the City's termination of utility services in the event the conditional/temporary CO is revoked, canceled, expired and/or terminated.

AGREEMENT

NOW THEREFORE, it is mutually agreed as follows:

1. Purpose. The purpose of this Agreement is to set forth the mutual obligations, responsibilities, and rights of the City and Port for the design, financing, and construction of the Improvements within Industrial Park No. 5. No separate legal entity is created by this Agreement.
2. Contingencies.
 - 2.1 Separate Agreements. As a condition precedent to the parties' rights, duties, and obligations hereunder, the Port shall enter into a separate agreement with ALWC regarding its participation in the financing and construction of the Improvements, which is attached hereto as Exhibit A. As a condition precedent to the parties' rights, duties and obligations hereunder, ALWC shall enter into a separate agreement with the City regarding the terms and conditions of the City's issuance of a SEPA determination, a conditional/temporary CO, and ALWC's agreement to indemnify and hold the City and the Fire District harmless from and against any and all claims arising out of the issuance of the temporary/conditional CO and/or its revocation in the event the Improvements are not completed. A copy of that agreement is attached hereto as Exhibit B. No amendments to Exhibits A and/or B shall be permitted unless consistent with the purpose, terms, and conditions of this Agreement and unless they have been approved by the City. Exhibits A and B must be executed by March, 30, 2018, and, if not, this Agreement shall automatically terminate and shall be void and of no further force and effect.
 - 2.2 Financing. As a condition precedent to the parties' rights, duties and obligations hereunder, the City shall have received the following financing no later than the date the contract for the construction of the Improvements is awarded by the City:
 - a. State of Washington legislative appropriation in the net amount of \$679,000;
 - b. CERB loan of \$1,050,000 and CERB grant of \$300,000; and

c. Payment of \$421,000 from the Port that together with the legislative appropriation fully repays the above identified CERB program loan and County SIP program loan of \$50,000.

If the financing conditions set forth in this Section 2.2 are not satisfied, this Agreement shall automatically terminate and shall be void and of no further force and effect.

2.3 Approval of Request for Bids. As a condition precedent to the Port's duties and obligations hereunder, prior to the City's request/call for bids for the Improvements, the City shall provide the Port with a copy of all documents comprising the City's request/call for bids for the Improvements for approval by the Port, which approval must be expressed in a writing signed by a Commissioner of the Port who has authority to sign on behalf of the commission. If the Port does not so approve the City's request/call for bids, this Agreement shall automatically terminate and shall be of no further force and effect.

2.4 Additional Permits and Easements. As a condition precedent to the City's duties and obligations hereunder, prior to the City's award of a contract for the construction of the Improvements, the City shall have obtained, without any additional cost, all necessary and/or required permits, easements and authorizations necessary to complete the Improvements, including but not limited to, the I-90 crossing permit from WSDOT, the canal crossing permit from USBR, and easements from any property owners. If the City is unable to obtain such additional permits, easements and/or authorizations, this Agreement shall automatically terminate and shall be of no further force and effect.

3. Duration. This Agreement shall become effective immediately upon execution by all parties and recording or posting on the website of one of the parties pursuant to RCW 39.34.040. This Agreement shall remain in effect until the Improvements are completed and accepted by the City and the Port has made arrangements for the payment of its share of the Improvements, unless sooner terminated pursuant to Section 2, above, or Section 10, below.

4. Improvements Description. The Improvements consist of the following water system improvements to extend the System to Industrial Park No. 5:

Approximately 6,000' of 16" Water Transmission Main and appurtenances extending the System to Industrial Park No. 5 and connecting the existing municipal water well situated upon Lot 2 within Industrial Park No. 5 to the System in order to provide 3,500 gpm fire flow for a two (2) hour duration, and provide potable water and process water needs to the industrial park that will serve a total of approximately 9,700 ERU (single family residences).
5. Design and Construction of Improvements. The City shall be the lead agency for the design and construction of the Improvements.
 - 5.1 All improvements shall be designed and constructed to City standards and in compliance with all federal, state, and local laws and regulations, including compliance with public works bidding and any required worker safety programs.
 - 5.2 The City shall ensure that copies of all plans, specifications, requests for bids and "as-built" drawings, for the Improvements are distributed to the Port.
 - 5.3 The City shall require any construction contractor awarded any contract for the Improvements to provide the Port with a certificate of insurance and endorsement specifically naming the Port as an additional insured prior to the contractor commencing work on the construction project. The contractor shall provide at least \$2,000,000.00 in general liability coverage and shall include automobile insurance.
6. Completion of Improvements. The City shall construct the Improvements as soon as reasonably practicable. The parties anticipate that the design and construction of the Improvements shall be complete by December 31, 2019. Upon completion of the Improvements, any right-of-way or utility easements within Industrial Park No. 5 shall be dedicated to the City. Upon completion and acceptance of the Improvements, the Improvements shall be part of the City's System and the City shall be responsible for all further operation and maintenance costs of the Improvements.

7. Payment of Costs of Improvements.

- 7.1 Except as otherwise provided in this Section 7, the City shall be responsible for payment of all costs of the Improvements, which costs shall be paid by and through the CERB loan (\$1,050,000), the CERB grant (\$300,000), the SIP grants (\$200,000) and the SIP loan (\$50,000). The State of Washington legislative appropriation of \$679,000 (net) shall be applied by the City in partial repayment of the CERB loan.
- 7.2 The Port shall pay to the City \$421,000, as set forth in Section 2.2, above, which shall be applied by the City together with the State of Washington legislative appropriation of \$679,000 (net) in full repayment of the CERB and SIP program loans.
- 7.3 Except as otherwise set forth in Sections 7.4, 7.5 and 7.6, below, the Port shall be responsible for reasonably necessary costs of the Improvements in excess of the estimated Improvements costs of \$1,500,000 ("Excess Costs"). Except as set forth below in Section 7.5, the City shall not be responsible for any Excess Costs nor shall it have any obligation to pursue construction of the Improvements absent the City Council's decision to obligate the City to additional costs in excess of \$1,500,000, which shall be entirely at the City Council's discretion.
- 7.4 In the event the City determines to accept a bid for the Improvements with a total cost in excess of \$1,500,000, prior to such acceptance, the City shall provide the bid and all supporting documents to the Port for the Port's approval, such approval to be expressed in a writing signed by a Commissioner of the Port. If the Port does not so approve, the Port shall not be responsible to pay that amount of the bid in excess of \$1,500,000.
- 7.5 In the event the City determines to request, authorize, or approve any change orders, construction change directives, force directives, amendments, or modifications to the contract for the construction of the Improvements ("Amendments") which result in any Excess Costs, the first \$80,000 of such Excess Costs shall be paid by the City from the proceeds of the SIP grants,

provided that the SIP grants are still available for such use. The SIP grants expire on November 13, 2018 and, if the Improvements are not completed by that date, the City agrees to request an extension of the award from the Grant County Board of Commissioners.

- 7.6 In the event the City determines to request, authorize, or approve any Amendments which result in total Excess Costs exceeding \$80,000, or in the event the SIP grants have expired and the City did not receive an extension thereof, no less than fifteen (15) days prior to authorizing such Amendments, the City must submit such Amendments to the Port for the Port's review and comment. The Port shall not be responsible to pay Excess Costs associated with any Amendments for which it has not been given timely notice and opportunity to review and comment as required in this Section 7.6. Notwithstanding anything to the contrary contained in this Agreement, the Port shall not be responsible to pay more than \$200,000 to the City for Excess Costs arising from Amendments except upon subsequent written agreement between the Port and the City. In no event shall the City have any responsibility to pay Excess Costs beyond the \$80,000 referenced in Section 7.5 above.
- 7.7 The Port acknowledges the possibility that the Improvements may not be completed if the Port is unwilling to pay Excess Costs exceeding \$280,000, which includes the City's commitment pursuant to Section 7.5 above and the Port's commitment pursuant to Section 7.6 above. In that event, the Port agrees to indemnify and hold the City harmless from and against any and all claims arising out of or related to the failure of the extension of the City's System to Industrial Park No. 5 and any impacts resulting therefrom, including any penalties, mandatory funding repayments, costs, or fines assessed against the City by the Washington State Department of Commerce.
- 7.8 All Excess Costs for which the Port is responsible shall be paid in full within fifteen (15) days of the City's notice of the Excess Costs Amendment pursuant to Section 7.6 above.

8. Easements. The Port shall assist the City in obtaining any additional easements necessary to operate and maintain that portion of the Improvements situated within Industrial Park No. 5.

9. Indemnification.

9.1 The Port shall hold harmless, indemnify and defend the City, its officers, officials, employees, contractors, and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Port's negligent or intentional acts, errors, or omissions in the performance of this Agreement; PROVIDED, HOWEVER, that the Port's obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the City, its officers, officials, employees, contractors, or agents; PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the Port's obligations hereunder shall apply only to the percentage of fault attributable to the Port, its officers, officials, employees or agents; PROVIDED FURTHER, by mutual negotiation, the Port expressly waives, as respects the City only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

Additionally, the Port shall hold harmless, indemnify and defend the City, its officers, officials, employees, contractors, and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business including lost profits, arising out of or related to:

A. Any revocation, termination or cancelation of the conditional/temporary CO to ALWC because the Improvements

are not completed as a result of the Port's unwillingness to pay Excess Costs beyond those described in Section 7.6, above.;

- B. The termination of utility service to ALWC because the Improvements are not completed as a result of the Port's unwillingness to pay Excess Costs beyond those described in Section 7.6, above; and/or
 - C. The inability of the City to provide utility service to any existing or future Port tenant and/or the Port because the Improvements are not completed as a result of the Port's unwillingness to pay Excess Costs beyond those described in Section 7.6, above.
- 9.2 The City shall hold harmless, indemnify and defend the Port, its officers, officials, employees, contractors, and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, caused by or arising out of the City's negligent or intentional acts, errors, or omissions in the performance of this Agreement and/or arising by reason of the City's participation in the construction of the Improvements; PROVIDED, HOWEVER, that the City's obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the Port, its officers, officials, employees, contractors, or agents; PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the City's obligations hereunder shall apply only to the percentage of fault attributable to the City, its officers, officials, employees, or agents; PROVIDED FURTHER, by mutual negotiation, the City expressly waives, as respects the Port only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

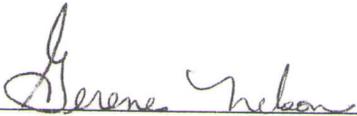
- 9.3 The parties hereby agree that, except as expressly set forth in this Agreement, the performance of services pursuant to this Agreement shall not constitute an assumption by the City of any Port obligations or responsibilities. Likewise, the parties hereby agree that, except as expressly set forth in this Agreement, the performance of services pursuant to this Agreement shall not constitute an assumption by the Port of any City obligations or responsibilities.
- 9.4 The parties agree that the provisions of this section shall survive the expiration and/or termination of this Agreement.
10. Termination and Dispute Resolution. This Agreement may be terminated prior to the expiration of the term specified in Section 3:
- 10.1 Upon mutual agreement of the parties, in which event the termination shall be effective at any time and subject to the conditions established by mutual agreement; or
- 10.2 If a party fails to comply with any material provision of this Agreement, the other party may terminate this Agreement for default upon thirty (30) days' prior written notice specifying the default to the defaulting party. Any extra costs, expenses, or damages incurred by the non-defaulting party as a result of the termination for default shall be borne exclusively by the party in default, provided, however, that the non-defaulting party has first exhausted the dispute resolution process set forth in Section 10.3 below. The rights and remedies of this provision are in addition to any other rights or remedies provided to the non-defaulting party by law or under this Agreement. Any termination of this Agreement for default shall not relieve the defaulting party of any obligation which may arise out of work already performed prior to such termination.
- In the event of a Port default, the City may proceed pursuant to any remedy available at law. Upon termination of this Agreement, title to all improvements made pursuant to hereto shall vest with the City, and the Port shall timely execute any documents necessary to effectuate such transfer of title.

- 10.3 In the event of a dispute arising out of this Agreement where the parties are unable reach a resolution through informal discussion, the parties agree to participate in non-binding mediation before a third party professional mediator, whose selection will be mutually agreed upon. The cost of mediation will be borne equally by both parties and mediation should occur within thirty (30) days of a request by either party to engage in mediation. No claim or suit may be brought until the dispute resolution procedures as set forth in this section have been exhausted. If dispute resolution efforts under this section are not successful, either party may institute legal action to enforce the terms and conditions of this Agreement.
11. Notices. Unless otherwise directed in writing, notices, documents, and payments shall be delivered to each party as follows:
- | | |
|---------------------|----------------------------------|
| To the City: | To the Port: |
| City of George | Grant County Port District No. 1 |
| PO Box 5277 | 101 F Street SW |
| George, WA 98824 | Quincy, WA 98848 |
- Notices mailed by either party shall be mailed both certified and first class mail, postage prepaid, and shall be deemed effective on the date mailed. Either party may change its address for receipt of notices, documents, and payments by giving the other party written notice of not less than five days prior to the effective date.
12. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any action, claim or proceeding brought under this Interlocal Agreement shall be commenced exclusively in the Superior Court for Grant County or in the federal courts of the United States for the Eastern District of Washington.
13. Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the entire agreement of the parties and supersedes all prior agreements, contracts, and understanding, written or oral. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of the Agreement. Any and all previous agreements, understandings, and the like, oral or otherwise, are hereby revoked.

14. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture, or other joint enterprise between the parties.
15. Port Covenants and Representations. The Port covenants and agrees that, until final completion of the Improvements and acceptance by the City, it will not market, promote, represent, or advertise that Industrial Park No. 5 properties have access to a City water supply beyond the current 100 gpm existing well on Lot 2.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective on the latest date shown below. The signatories below represent and warrant that they possess the authority to execute this Agreement and bind their respective entities.

CITY OF GEORGE

By: 
Gerene Nelson, Mayor

Date March 29, 2018

**GRANT COUNTY
PORT DISTRICT NO. 1**

By: _____
Patric F. Connelly, Commissioner

By: _____
Curt A. Morris, Commissioner

By: _____
Brian A. Kuest, Commissioner

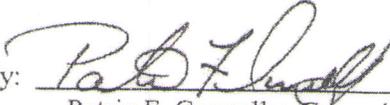
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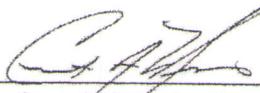
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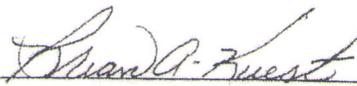
CITY OF GEORGE

By: _____
Gerene Nelson, Mayor

**GRANT COUNTY
PORT DISTRICT NO. 1**

By: 
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By: 
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By: 
Brian A. Kuest, Commissioner