

CITY OF SELAH
INDUSTRIAL WASTEWATER USER CONTRACT
TREE TOP, INC.

February 13, 2007

COPY

1. Parties:

- 1.1. City of Selah, a Washington municipal corporation, hereinafter referred to as "the City."
- 1.2. Tree Top Inc., a corporation, hereinafter referred to as "Tree Top."

2. Industrial Wastewater Terms, Conditions:

- 2.1. This Contract shall commence upon the signing of this Contract, and shall continue until terminated by Tree Top as provided herein.
- 2.2. Tree Top may terminate this Contract by providing the City with written notice at least thirty (30) days prior to the date of Contract termination.
- 2.3. Monitoring of the industrial wastewater discharges shall be conducted by the City. The existing magnetic flow meter and automatic sampler will be used to monitor discharges. Discharge shall be from the Hycor pit, through the capped pipe connected to the City's industrial pretreatment facility.
- 2.4. The City shall gather and handle all samples in accordance with recognized standards and requirements and will use only certified laboratories for testing of the samples.
- 2.5. Tree Top may request that duplicate samples be taken at any time during the period of the Contract. The City will make duplicate samples available to Tree Top for their own testing at the time the City retrieves their samples from the sampling device.
- 2.6. It is understood that, due to differences in handling and testing procedures, no direct comparison between the City's testing results and Tree Top's testing results can be made.
- 2.7. Testing results of the City shall be used to determine the characteristics of the wastewater for the purpose of establishing industrial wastewater billings.
- 2.8. Unauthorized discharge of industrial wastewater by Tree Top to the City's wastewater system which has not passed through the industrial monitoring facility shall be considered a violation of this Contract. For intentional discharges, the fine for such a violation shall be \$1,000 per day for every day on which such unauthorized discharge occurs. For unintentional discharges, the fine for such violation shall be \$100 per day for every day on which such unauthorized discharge occurs. Tree Top may appeal any such fines to the Selah City Council.
- 2.9. Discharges of industrial wastewater to the City's industrial wastewater pretreatment facility shall, in volume and strength, not exceed the amounts listed

in Schedule A attached hereto. The listed values are the monthly average values measured at the industry's discharge, and represent the combined total of all industrial discharges to the City's wastewater treatment system.

- 2.10. It is recognized that Tree Top may wish to discharge to the City on an emergency basis at times outside of, and/or in quantities in excess of, those listed in Schedule A - Allowable Wastewater Discharges. No emergency discharges shall be allowed unless authorized by the City. Tree Top shall notify the City of Selah as soon as possible prior to any discharge to the City system on said emergency basis. Such notification shall be made to the City of Selah Wastewater Treatment Plant Supervisor. The City shall review its treatment plant loadings and advise if emergency discharge is allowed.

3. Rates and Charges:

- 3.1. Monthly charges for the discharge of industrial wastewater shall be based on the volume and strength of wastewater discharged. Monthly charges will be based on the total volume of wastewater discharged during the month as measured by the City flow meter, the strength of the wastewater, expressed as pounds of BOD per month, and pounds of TSS per month, as determined through testing of the wastewater by the City.
- 3.2. Rates for volume and strength of industrial wastewater discharged shall be as given in the City's most current sewer rate resolution for Industrial Users Required to Connect to the City Pretreatment Facility.
- 3.3. Rates and charges shall be subject to annual review by the City Council and may be adjusted as required to meet the revenue needs of the City's sewer fund.
- 3.4. If components of Tree Top's industrial wastewater discharges exceed the allowable quantities set forth in Condition 2.9 of this Contract, the rates for that portion in excess of that set forth in Condition 2.9 shall be 1.25 times the rate as set forth in Conditions 3.2 and 3.3. This surcharge provision shall not apply to emergency discharges authorized under Condition 2.10.

4. Prohibited Discharges:

- 4.1 Tree Top shall not cause or permit the release or discharge of the following pollutants to the City's wastewater system:
 - A. Pollutants which create a fire or explosion hazard in the City's wastewater system, including, but not limited to, discharges with a closed cup flashpoint of less than 140° Fahrenheit or 60° Centigrade using the test method specified in 40 CFR 261.21;
 - B. Pollutants which will cause corrosive structural damage to the wastewater system, but in no cases discharges with a pH lower than 5.0 or greater than 11.0;
 - C. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the wastewater system;
 - D. Any discharge at a flow rate and/or concentration which will cause interference with wastewater treatment;

- E. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference with wastewater treatment or will pass through the wastewater system untreated;
- F. Pollutants which result in the presence of toxic gases, vapors, or fumes within the wastewater system in a quantity that may cause acute worker health and safety problems or will pass through the wastewater system untreated; and
- G. Heat in amounts which will inhibit biological activity or which would cause wastewater entering the treatment plant to exceed 40° Centigrade unless otherwise approved by the City prior to commencing the discharge.

5. Billing Procedure:

- 5.1 Monthly billings by the City and payments by Tree Top shall be in accordance with City standard billing and payment procedures.

6. Remedies if Tree Top Fails to Perform:

- 6.1. If Tree Top fails to make any payment or perform any obligation required of Tree Top under the terms of this Contract, the City shall be entitled to exercise all rights and remedies allowed by law or equity including, without limitation, the following remedies which may be cumulative:
 - A. Collection Action: The City may commence an action for the collection of past due payments or obligations.
 - B. Damages, Fines, Penalties: In the event the Tree Top fails to perform this Contract including, without limitation, prohibited discharges, Tree Top shall be responsible for any damages to the City, including without limitation:
 - 1. Costs incurred in connection with removal of debris or obstructions from pipelines, pumping stations, and other wastewater system components;
 - 2. Costs of repairs to the City facilities and equipment;
 - 3. Any environmental cleanup costs; and
 - 4. Any damages, costs, fines, penalties, or expenses for which the City may be obligated as a result of Tree Top's failure to perform this Contract.
- 6.2 If the City fails to perform any obligation required of the City under the terms of this Contract, Tree Top shall be entitled to all rights and remedies allowed by law or equity.

7. Indemnification:

- 7.1 Tree Top will at all times indemnify and hold harmless and defend the City, its elected officials, officers, employees, agents, and representatives from and against any and all losses, damages, costs, charges, expenses, judgments, and liabilities, including attorney's fees (including attorney's fees in establishing indemnification of whatsoever nature), collectively referred to herein as "losses," directly or indirectly resulting from, arising out of, or related to one or more claims, as hereinafter defined, unless such losses or claims, or both, directly or indirectly result from, arise out of or relate to, or are asserted to have resulted from, arisen out of or related to, in whole or in part, one or more negligent acts or omissions of the City or its elected officials, officers, agents, representatives, employees, or any other party acting for or on behalf of the City.
- 7.2 The term "claims" as used herein shall mean all claims, lawsuits, causes of action, and other legal actions and proceedings of whatsoever nature, including but not limited to claims, lawsuits, causes of action, and other legal actions and proceedings involving bodily or personal injury or death of any person or damage to any property (including but not limited to persons employed by the City, Tree Top, or any other person and all property owned or claimed by the City, Tree Top, and any affiliate of Tree Top, or any other person).
- 7.3 The obligations of Tree Top hereunder shall apply to all losses or claims, or both, that result from, arise out of, or are related to any event, occurrence, condition or relationship, whether such losses or claims, or both, are asserted. The City will not be liable to Tree Top for, and Tree Top hereby releases the City from, all liability for any injuries, damages, or destruction to all or any part or parts of any property owned or claimed by Tree Top that directly or indirectly result from, arise out of, or relate to Tree Top's use of the City's wastewater facilities or under this Contract or any part thereof, unless such injuries, damages, or destruction directly or indirectly result from, arise out of, or relate to, in whole or in part, one or more negligent acts or omissions of the City or its elected officials, directors, employees, agents, representatives, or any other party acting for or on behalf of the City.
- 7.4 In case any action shall be brought against the City in respect of which indemnity may be sought against Tree Top, the City shall promptly notify Tree Top in writing and Tree Top shall have the right to assume the investigation and defense thereof including the employment of counsel and the payment of all expenses. The City shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by the City unless the employment of such counsel has been authorized by Tree Top and Tree Top shall control the defense of claims against which it is providing indemnity hereunder.
- 7.5 Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the officers, employees, and agents, Tree Top's liability hereunder shall be only to the extent of Tree Top's negligence.
- 7.6 It is further specifically and expressly understood that the indemnification provided herein constitutes Tree Top's waiver of immunity under industrial

insurance, Title 41 RCW, solely for the purpose of this indemnification. This Waiver has been mutually negotiated by the parties.

RTJ initial

[Signature] initial

- 7.7 The provisions of this indemnification section shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF the parties hereto have executed this Contract as of this 13th day of February, 2007.

CITY OF SELAH

[Signature]
ROBERT L. JONES, MAYOR

ATTEST:

[Signature]
DALE NOVOBIELSKI, CITY CLERK

TREE TOP, INC.

[Signature]
DULY AUTHORIZED REPRESENTATIVE

CITY OF SELAH
INDUSTRIAL WASTEWATER USER CONTRACT
TREE TOP, INC.

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SCHEDULE A
ALLOWABLE WASTEWATER DISCHARGES

Month	Average Daily Flow (gallons per day)	Average Daily BOD Loading (pounds per day)	Average Daily TSS Loading (pounds per day)
January	80,000	1,600	500
February	80,000	1,600	500
March	80,000	1,600	500
April	0	0	0
May	0	0	0
June	0	0	0
July	0	0	0
August	0	0	0
September	0	0	0
October	80,000	1,600	500
November	80,000	1,600	500
December	80,000	1,600	500

1. Maximum flow rate discharged to City shall not exceed 400 gpm.
2. Tree Top shall provide details of the characteristics of the proposed discharge and the hours of the day when flow will occur for City review and approval prior to commencing discharge.
3. It is understood that BOD is the limiting parameter. Therefore, the average daily flow may be increased up to a maximum of 150,000 gallons per day provided the average daily BOD loading does not exceed 1,600 pounds per day.