

Agreement between the City of Othello and SVZ-USA, Inc.

This Agreement is entered into this 8 day of Dec., 2022 (hereinafter referred to as "Effective Date of the Agreement"), between the City of Othello, Washington (hereinafter referred to as "City") and SVZ-USA (hereinafter referred to as "Significant Industrial User (SIU)"). The City and SIU will be hereinafter jointly referred to as the "Parties".

RECITALS

1. The City owns and operates a wastewater treatment system.
2. SIU wishes to utilize the City's wastewater treatment system.
3. The Parties recognize that the City must implement and enforce a pretreatment program to control discharges from all SIUs of its wastewater treatment system pursuant to requirements set out in 40 CFR Part 403, Chapter 173-216 Washington Administrative Code (WAC) State Waste Discharge Permit Program, and Othello Municipal Code (OMC).
4. The SIU has submitted a permit application with Washington Department of Ecology ("Ecology") which will allow discharge of the SIU wastewater to the City.

AGREEMENT

1. The City will provide sanitary sewer treatment to SIU in consideration for payment of applicable sewer use rates and fees. Applicable sewer use rates and fees are set forth in Exhibit A to this Agreement. The City's obligation to provide sanitary sewer treatment to SIU will not begin unless and until Ecology issues all required permits and approvals.
2. SIU will comply with all applicable prohibitions of the Othello Municipal Code (OMC), Chapter 173-216 WAC, 173-303 WAC, and 40 CFR Parts 403 through 471, all other Washington and federal laws pertaining to SIU's utilization of the wastewater system, and all applicable discharge limitations, wastewater monitoring and reporting requirements set forth in Exhibit B to this Agreement. If Ecology issues an Administrative Order or permit to SIU, SIU will comply with all conditions and obligations imposed on it by the said order or permit.
3. The SIU shall be responsible for continuously monitoring waste flow from its facility. Flow shall be continuous and include recordable totalizing feature by the metering equipment.
4. The SIU shall also be responsible for furnishing, installing and maintaining composite sampling equipment for monitoring of waste flow from its facility.

5. The SIU shall maintain the plan for conveyance of proposed and future industrial and sanitary flows, discharge flow measuring, and sampling infrastructure. The plan shall include:
 - a. Means and methods of sampling, and specific testing procedures that address conformance with Table 3 of this agreement.
 - b. A facility Operation and Maintenance (O&M) Manual – the O&M manual shall describe the operation, and identify all tasks necessary for the sampling and monitoring devices to ensure proper working order and upkeep.

6. SIU subjects itself to any enforcement action available to the City under the terms of the OMC for any violation of the OMC, terms of the permit issued by Ecology, or this Agreement. SIU accepts the jurisdiction of Adams County for the purposes of enforcing this Agreement and will comply with any order of that court to comply with this Agreement or pay penalties for the violation thereof. Any violation of the OMC, permit issued by Ecology, or this Agreement may result in the City terminating acceptance of SIU's wastewater. Termination shall be preceded by 24 hours written notice to SIU. SIU shall be liable to the City for the greater of (a) a maximum civil penalty of \$1,000 per violation per day in accordance with the Section 12.26.590 of the OMC, or (b) any penalty, fee, or loss incurred by the City due in any part to SIU's utilization of the wastewater treatment system.

7. SIU shall provide necessary facilities and provide for continuous flow measuring of their discharge, and automatic composite sampling in compliance with Exhibit B. An independent and certified testing laboratory shall be perform all sample testing. Instructions to the testing laboratory will be that both the SIU and the City receive copies of the results. All costs involved in the testing described herein shall be the responsibility of the SIU.

8. SIU will provide access to City, or its agents, to all parts of its facilities for all measuring, sampling, testing, or other inspection to ascertain compliance with this Agreement, City's OMC, and SIU's Agreed Order. City may conduct inspections at all reasonable times and without prior notice. The SIU shall notify the City, in writing, of any discharge of a substance

- that would, if otherwise disposed of, be considered a hazardous waste under the terms of this contract.
9. The SIU shall submit to the City once a month a report containing daily records of wastewater flow. The report shall be submitted to the City Public Works no later than the fifteenth (15th) day of each month.
 10. The SIU shall operate their pretreatment facilities in such a manner to ensure their ability to retain and not discharge industrial flow to the City system for a period of seven (7) days. In emergency situations or for operational treatment issues that compromise the City's ability to meet their NPDES discharge permit limits, the City reserves the ability to request SIU to suspend discharging to the City facilities for a period not to exceed 7 days without any additional written agreement between the two parties. SIU shall be notified 24 hours prior to necessary shutdown, if possible.
 11. If Ecology approves of this Agreement and issues all necessary permits to SIU, then this Agreement will authorize SIU to discharge to City's wastewater treatment system for a specified period of five (5) years. Prior to or after the expiration of this Agreement, SIU may submit application for a permit as specified in the OMC. The City and Washington Department of Ecology will review the application and decide whether to amend this Agreement with SIU. The City may deny SIU an extension or future permit for whatever reason it deems appropriate.
 12. Planned City capital improvements currently include wastewater treatment facility upgrades. Cost of any improvement shall be proportionally shared between the City and SIU based on the proportional impact of SIU's discharging on the system. Proportional costs shall be as follows:
 - a. Headworks, disinfection, and civil site related improvement costs shall be proportionally based from the average annual influent flows [SIU flow / Total flow].
 - b. Biological treatment, and biosolids related improvement costs shall be proportionally based on SIU's "biological oxygen demand" ("BOD") compared to the total BOD [SIU BOD / Total BOD].
 13. SIU will indemnify City for all damages, fines, and costs incurred as a result of its industrial waste discharge. SIU will defend the City from any action against the City related to SIU's utilization of the wastewater treatment system, whether or not the action alleges or involves

negligence or wrongdoing of the City and/or third parties, and whether or not the action involves concurrent culpable actions of SIU, the City, and/or third parties.

14. If any term of this Agreement is held to be invalid in any judicial action, the remaining terms will be unaffected.
15. The terms and conditions of the agreement may be subject to modifications by the City during the term of the agreement in the case of regulatory changes to the assumed NPDES permit limitations. The SIU shall be informed of any proposed changes in this agreement at least 30 days prior to the effective date of the change. SIU may request a transition period for implementation of the modified limits in writing.
16. This Agreement will remain in effect for five years from the Effective Date of the Agreement.
17. This Agreement may be amended only by written agreement of the Parties, except as provided in paragraph 15 herein.
18. Any action to enforce this agreement shall only be brought in a Washington State court situated in Adams County, Washington, unless jurisdiction only lies in federal court, in which case it shall be brought in the United States District Court for the Eastern District of Washington. The prevailing party in any action brought to enforce this agreement shall be entitled to recover its attorney fees and costs incurred in the action.

City:

SIU:

SVZ USA WASHINGTON INC.

By:

Shawn R. Lopez

By:

David Stewart

Title:

Mayor

Title:

President

(Attach evidence of authority to sign.)

Address for giving notices:

Address for giving notices:

1700 N. Broadway

Othello, WA 99344

This is EXHIBIT A, SEWER USE RATES AND FEES, referred to in and part of the Agreement between the City and SIU dated 12/8, 2022.

Per Sections 12.16, 12.26.710 and 12.26.730 of the OMC and herein, the sewer use rate and fees are set forth below:

Rate Schedule

1. Per OMC 12.16 for a single commercial occupancy user, the SIU shall pay \$64.78 per month for the first 1,000 cubic feet of wastewater discharge and 100 pounds per day of BOD.
2. Per OMC 12.16 for a single commercial occupancy user, the SIU shall pay \$2.62 for each additional 100 cubic feet of discharge over the first 1,000 cubic feet noted in schedule (1) of this rate schedule.
3. The SUI shall pay additional rates per pound of BOD discharge above 100 pounds per day as listed in the following table. The SUI may discharge up to 1000 pounds per day to the City's system.
4. The Rate Schedule is subject to periodic review and may be adjusted through the City's "Water and Sewer Service and Rates". (the rates for 2021 to 2024 are hereby attached). Rates for 2025 to 2027 to be in accordance with annual adjustments adopted by City Council.
5. Overages: the SIU shall pay penalties for flow and load discharges over the limits described herein. Penalties are two tiered. The intent of a two tiered penalty is to differentiate between occasional minor violations and flow and load exceedances that may impact system treatment and/or result in violations of the City's NPDES permit. Limit overage penalties shall be as follows:
 - a. Tier 1: Penalty costs for average day flows and/or loads which exceed limits defined in Exhibit B by less than 10% and BOD loads between 400 and 800 pounds per day shall be 2.0 times the current applicable unit rate for the flow and/or load above the daily limits.
 - b. Tier 2: Penalty costs for average day flows which exceed limits defined in Exhibit B for 3 consecutive days or greater than 10% and BOD loads above 800 pounds per day shall be 3.0 times the current applicable unit rate for the flow and/or load above the daily limits.

Increases to monthly charges shall be as follows:

Industrial Sewer Rates Standard

	2022	2022	2024	2025	2026	2027
Category	Effective December 16, 2021	Effective December 16, 2022	Effective December 16, 2023	Effective December 16, 2024	Effective December 16, 2025	Effective December 16, 2026
Industrial (SIU) single discharger for up to 1,000 cubic feet[dollars/month]	64.78	64.78	64.78	TBD	TBD	TBD
Industrial (SIU) single discharger for each additional 100 cubic feet of discharge over 10,700 cubic feet (80,036 gal) [dollars/100 cf/day]	2.62	2.62	2.62	TBD	TBD	TBD
Industrial (SIU) single discharger with average day BOD5 over 100 lb/day and up to 400 lb/day [dollars/lb/day]	0.55	0.55	0.55	TBD	TBD	TBD
Tier 1 Penalty						
In the event the SIU daily flow rate exceeds 10,700 CF (80,036 gal) and is less than 11,700 CF the fee shall be 2 times the base rate for the excess daily flow **	5.24	5.24	5.24	TBD	TBD	TBD
In the event the SIU daily BOD5 exceeds 400 lbs/day & less than 800 lbs/day fee shall be 2 times the base rate for the excess daily load **	1.10	1.10	1.10	TBD	TBD	TBD
Tier 2 Penalty						
In the event the SIU daily flow rate exceeds 11,700 CF the fee shall be 3 times the base rate for the excess daily flow. ***	7.86	7.86	7.86	TBD	TBD	TBD
In the event the SIU daily BOD5 exceeds 800 lbs/day fee shall be 3 times the base rate for the excess daily load ***	1.65	1.65	1.65	TBD	TBD	TBD

* this rate assumes 100 lb/day of BOD5

** tier 1 penalty is intended for a single day excursion under 110% of the flow and BOD5 loads between 400 and 800 lbs/day

*** tier 2 penalty is intended for a 3 consecutive day Tier 1 excursion and/or any daily event that is greater than 110% of the flow or BOD5 loads above 800 lbs/day

TBD - To be determined by City Council adopted rate increases

This is EXHIBIT B, DISCHARGE LIMITATIONS, WASTEWATER MONITORING, AND REPORTING REQUIREMENTS, referred to in and part of the Agreement between the City and SIU dated _____, 2022.

The applicable discharge limitations, wastewater monitoring and reporting requirements are set forth below and in the Othello Municipal Code (OMC):

1. Reporting Requirements:

- a. Discharge Monitoring Reports must be submitted on forms provided by the City and must be received at the City's address listed on the Agreement by the 15th day of the month following the sampling period.
- b. Conveyance of wastewater must be piped from the approved SIU discharge point directly to the City's wastewater collection system. In the event tanker trucks are used to haul flow, the following procedures shall be followed:
 - i. City review and approval of all tankers. The SVZ shall provide to the City an opportunity to observe proposed tanker full condition. Tankers shall be demonstrate they are free of leaks.
 - ii. Discharging wastewater via tankers shall only occur between the hours of 7:00 am and 3:00 pm, Monday – Friday (no weekends or legal holidays).
 - iii. City shall be notified 24 hours prior to any wastewater discharging. Call Public Works office 509-488-6997, or Public Works Director 509-750-6901.
- c. The SIU must retain records of all monitoring information for a minimum of three (3) years.
- d. For each measurement or sample taken, the SIU must record the following information:
 - i. SIU's name, mailing and physical address
 - ii. The date, exact place, method, and time of sampling or measurement
 - iii. The individual who performed the sampling or measurement
 - iv. The dates the analyses were performed
 - v. The individual who performed the analyses
 - vi. The analytical techniques or methods used
 - vii. The results of all analyses

- e. The SIU must take the following actions when it violates or is unable to comply with any agreement condition or the City's OMC:
 - i. Immediately take action to stop, contain, and cleanup unauthorized discharges or otherwise stop the non-compliance and correct the problem.
 - ii. If applicable, immediately repeat sampling and analysis. Submit the results of any repeat sampling to City within thirty (30) days of sampling.
 - iii. Immediately, or within 24 hours, report the violation or non-compliance to the City.

2. Wastewater Discharge Limitations: The below limits apply at the point of discharge to the City's sewer system.

Table 2. Wastewater Discharge Limitations to City Sewer		
Parameter	Units	Peak Instantaneous
Flow	gallons per minute	Determined By Collection System Capacity
pH	S.U.	5.5 S.U. ≤ pH ≤ 9.0 S.U. at all times
Parameter	Units	Average Monthly^a
Flow from Lagoon Effluent	gallons per day	80,000
Flow from All Sources	gallons per day	80,000
5-Day Biochemical Oxygen Demand	lbs./day	1000
Parameter	Units	Maximum Daily^b
5-Day Biochemical Oxygen Demand	mg/L	1,000
Total Suspended Solids	mg/L	300
Total Ammonia (as N)	mg/L	60
Total Dissolved Solids	mg/L	5,000
Dissolved Sulfides	mg/L	0.5
Sulfates	mg/L	50
Chloride	mg/L	1,000
Total Arsenic	mg/L	0.48
Total Cadmium	mg/L	0.049
Total Chromium	mg/L	5.0
Total Copper	mg/L	0.30
Total Lead	mg/L	0.19
Total Mercury	mg/L	0.002
Total Molybdenum	mg/L	1.14
Total Nickel	mg/L	2.0
Total Selenium	mg/L	0.419
Total Silver	mg/L	0.06
Total Zinc	mg/L	4.18
Benzene	mg/L	0.05
BTEX ^c	mg/L	0.75
Oil and Grease	mg/L	300
Total Petroleum Hydrocarbons	mg/L	50

Notes:

^aThe average monthly effluent limitation is defined as the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

^bThe maximum daily effluent limitation is defined as the highest allowable daily discharge. The daily discharge means the discharge of a pollutant measured during a calendar day. The daily discharge is the average measurement of the pollutant over the day. In conformance with OMC 12.26

^cSum of benzene, toluene, ethylbenzene, xylene.

S.U. = Standard Units

Cyanide shall be tested for once every two (2) weeks during the 2022-2023 campaign.

Future testing will be determined based on the results.

3. Wastewater Monitoring Requirements: The SIU shall monitor and record the parameters listed in Table 3 below at the nearest point upstream of its discharge to the City's sewer system. The City must approve of the sampling point and method.

Table 3. Monitoring Requirements for Wastewater Discharge to City Sewer					
Parameter	Units (a)	To Calculate and Report	Sampling Frequency	Sample Type	Analytical Method (b)
Flow	GPD	Daily Measurements Monthly Average Monthly Maximum	Continuous	Recording Meter	Not Applicable
5-Day Biochemical Oxygen Demand	mg/L, lbs./day	Daily Measurements Monthly Average Monthly Maximum	1/week	24-Hour Composite	SM5210-B
Total Suspended Solids	mg/L, lbs./day	Daily Measurements Monthly Average Monthly Maximum	1/week	24-Hour Composite	SM2540-D
Total Ammonia (as N)	mg/L, lbs./day	Daily Measurements Monthly Average Monthly Maximum	1/week	24-Hour Composite	SM4500-NH3- GH
pH	Standard Units	Daily Minimum Daily Maximum	Continuous	Recording Meter	SM4500-H+B
Total Dissolved Solids	mg/L	Measurement, Day of Sample	1/month	24-Hour Composite	SM2540 C
Dissolved Sulfides	mg/L	Measurement, Day of Sample	1/month	Grab	4500-S2F/D/E/G
Sulfates	mg/L	Measurement, Day of Sample	1/month	Grab	SM4110-B
Chloride	mg/L	Measurement, Day of Sample	1/month	Grab	SM4500-Cl-
Total Arsenic	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA200.8
Total Cadmium	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA200.8
Total Chromium	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA200.8
Total Copper	mg/L	Measurement, Day of Sample	1/month	Grab	EPA200.8
Total Lead	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA200.8
Total Mercury	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA1631E
Total Molybdenum	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA200.8
Total Nickel	mg/L	Measurement, Day of Sample	1/month	Grab	EPA200.8
Total Selenium	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA200.8
Total Silver	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA200.8
Total Zinc	mg/L	Measurement, Day of Sample	1/month	Grab	EPA200.8
BTEX(d)	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA624
Cyanide	mg/L		1/every 2 weeks (e)	Grab	EPA335.4 and SM4500-CNG
Oil and Grease	mg/L	Measurement, Day of Sample	1/year (c)	Grab	EPA1664A (HEM)
Total Petroleum Hydrocarbons	mg/L	Measurement, Day of Sample	1/month	Grab	EPA 1664A

Notes:
(a) GPD = Gallons per Day
(b) "SM" refer to *Standard Methods for the Examination of Water and Wastewater*, Latest Edition, American Public Health Association (APHA), American Water Works Association (AWWA), and Water Environment Federation (WEF). "EPA" refers to EPA Method as listed in 40 CFR Part 136 *Guidelines Establishing Test Procedures for the Analysis of Pollutants*.
(c) Must be performed within 30 days of the Effective Date of the Agreement or within 30 days of discharge whichever occurs first.
(d) Sum of benzene, toluene, ethylbenzene, xylene.
(e) One sample per 2 weeks for the 2022/2023 campaign. Future testing TBD.