

**TOWN OF TWISP
INDUSTRIAL USERS DISCHARGE CONTRACT**

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Contracted User: Old Schoolhouse Brewery, Inc.
P.O. Box 577
Winthrop, WA 98862

Permit Number: _____

UBI No.: 602-827-871

Facility Location: 502 South Glover Street
Building 13
Twisp, WA 98856

Date: June 3 2019.

RECITALS:

A. The Town of Twisp, Washington, hereinafter referred to as "Town" is a municipal corporation of the State of Washington and in such capacity owns and operates sanitary sewer collection and treatment facilities, hereinafter referred to as "Facilities" for the collection, treatment, and disposal of residential, commercial and industrial wastewater.

B. Old Schoolhouse Brewery, Inc., hereinafter referred to as "Contracted User", is the user signing this Contract.

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DEPARTMENT OF ECOLOGY
CENTRAL REGIONAL OFFICE

C. The operation of the Facilities are subject to all federal, state and local laws and regulations, without limitation, relating to the discharge of commercial and industrial wastewater to the Facilities, as administered by the Washington State Department of Ecology, hereinafter referred to as "Ecology", which issues permits to the Town and to the Contracted User for such discharge.

D. The Contracted User is planning to operate a craft beer brewing facility within the Twisp Works campus in the Town of Twisp. The Contracted User is a wastewater generator and will produce and discharge wastewater to the Facilities with industrial strengths. This industrial strength of wastewater and potential loading to the Facilities is defined by Ecology as a Significant Industrial User, hereinafter referred to as "SIU".

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the Town and Contracted User do hereby agree as follows:

1. **Term of Contract:**

A. This Contract shall commence on June 3, 2019, and shall continue through June 3, 2024.

B. The Contracted User may make written request to the Town to renew this Contract six (6) months prior to the Contract's expiration date. The Town reserves the right to modify any Contract language, terms, conditions, allocation of capacity and/or rate to meet the conditions of any waste discharge permits issued to the Town and the revenue needs of the Town's sewer fund before renewing this Contract.

C. **Re-negotiation of Contract.** The Contracted User may request the evaluation and/or re-negotiation of this Contract during the Contract

term. Said request must be in writing to the Town, and must be made no later than one (1) year prior to the Contract's expiration date.

2. Water Services. The Twisp Works campus is served with three (3) water meters, which meters the usage of Town water, and are charged for water usage as a commercial customer pursuant to Twisp Municipal Code and Town rate resolutions. This method of charging for the use of water for the portion of the Twisp Works campus where the Contracted User is located shall continue during the term of this Contract, and any renewals or extensions, at such rates pursuant to the Twisp Municipal Code and rate resolutions, as amended and as applicable to a commercial customer in the Town.

3. Wastewater Rates and Charges. Twisp Works has historically been charged for commercial wastewater services as a Class 1 and Class 3 customer pursuant to the Twisp Municipal Code and rate resolutions. The Twisp Works shall continue to be charged in the same method during the term of this Contract, and any renewals or extensions, for commercial wastewater discharge pursuant to the Twisp Municipal Code and rate resolutions now existing, or as amended, as applicable to commercial wastewater customers in the Town.

4. Industrial Wastewater Rates and Charges. It has been determined that Contracted User will discharge industrial wastewater to the Facilities. Such industrial wastewater discharge will occur within Twisp Works sanitary sewer system, which discharges into the Facilities on 6th Street in the Town. The rates and charges for the SIU discharge shall be in addition to the rates and charges for the commercial wastewater discharge as set forth in paragraph 3 above. The industrial wastewater discharge rate shall be initially set at one dollar and twenty five cents (\$1.25) per pound of BOD, plus one dollar and twenty five cents (\$1.25) per pound of TSS, plus ten dollars (\$10.00) per thousand gallons of wastewater discharge and applicable taxes for each month during the term herein. On the twelfth billing month, the discharge rate will increase to one dollar and fifty cents (\$1.50) per pound of BOD, plus one dollar and fifty cents (\$1.50) per pound of TSS, plus eleven dollars (\$11.00) per thousand gallons of wastewater discharge. On the twenty fourth billing month, the discharge rate will increase to one dollar and seventy five cents (\$1.75) per pound of BOD, plus one dollar and seventy five cents (\$1.75) per pound of TSS, plus twelve dollars (\$12.00) per thousand gallons of wastewater discharge.

An overage surcharge at a rate of 200% greater than the current industrial wastewater discharge rate may be assessed by the Town for any and all amounts that exceed the Contracted Capacity identified under paragraph 6 herein. The overage surcharge shall only be assessed to that portion of the amounts greater

than the Contracted Capacity as set forth in paragraph 6 herein, and will be in addition to the calculated monthly industrial wastewater discharge amount.

After the twenty fourth billing month, the BOD and TSS per pound rates shall be adjusted by an amount equal to the percentage increase of other wastewater customer discharge rates whenever such rates change. For example, if the average wastewater customer discharge rates for other customers increase three percent (3%), then the BOD and TSS dollar per pound rates, and dollar per thousand gallons of wastewater discharge rate shall increase three percent (3%).

5. System Development Fees. In addition to the rates and charges set forth herein, because the introduction of wastewater from the Contracted User to the Facilities significantly changes the wastewater discharge from Twisp Works, the Contracted User shall pay a one-time standard development fee for water and sewer of \$5,000.00, due at the time of execution of this Contract. In addition, Contracted User shall pay to the Town the sum of \$500.00 as a one-time reimbursement for preparation of this Contract, also due at the time of execution of this Contract.

6. Capacity of the Facilities.

A. Capacity of the Facilities shall be pursuant to the Town's permits issued by the appropriate regulatory authorities.

B. The portion of the Facilities capacity shall be allocated to the Contracted User as set forth in Section 3 of this paragraph and shall be known as the "Contracted Capacity".

C. The Contracted Capacity shall be as follows:

I. Daily flow maximum of 3400 gallons per day on any one day, and an average monthly flow maximum of 1700 gallons per day.

II. The PH range shall be not less than 6.0 nor exceed 11.0 at any time.

III. The maximum monthly average loading shall be 50 pounds of BOD and 25 pounds of TSS per day. Peak day (24 hour average) loading shall not exceed 60 pounds of BOD per day and 30 pounds of TSS per day.

IV. The Contracted Capacity in Section 3 of this paragraph is subject to the operational requirements of Facilities and may be reevaluated from time to time by the Town and Contracted User, as necessary. The parties

agree to facilitate said meeting in a timely manner. If it is determined by both parties that the Contracted Capacity can and should be amended, this Contract may be amended accordingly.

V. The Contracted User shall immediately notify the Town when the discharge may or has occurred that is outside of the Contracted Capacity.

7. Discharge by Contracted User.

A. The Contracted User shall be solely responsible for obtaining any other permits necessary to discharge into the Facilities. The Contracted User shall provide a copy of such permits to the Town.

B. The Contracted User's industrial wastewater discharge into the Facilities shall not exceed the Contracted Capacity.

C. The Contracted User shall comply with all terms of any permits required from Ecology related to industrial discharge to the Facilities, as well as Ecology's Water Quality Program Permit Writer's Manual, Publication No. 92-109, as amended, and all federal, state and local laws and regulations, including the Twisp Municipal Code.

D. If the Contracted User's industrial wastewater exceeds the Contracted Capacity, the Town reserves the right to restrict discharges in order to permit the Town to meet its commitments to other users and to comply with its permits and requirements, or the Town may, at its sole discretion, accept additional discharges at the rates for that portion in excess of the Contracted Capacity at the surcharge rate listed in paragraph 4 herein.

E. The Contracted User shall not introduce or cause to be introduced in the Facilities any pollutant or wastewater that are generally prohibited to all users of the Facilities.

F. The Contracted User shall immediately notify the Town's Public Works Department of any accidental discharge. The purposes of this paragraph, "Accidental Discharge" means the inadvertent and unavoidable discharge of any wastewater or wastes that are prohibited or determined by the Town to be detrimental to the Facilities, or the discharge of industrial wastewater regulated in this Contract when the strength of such component or volume of flow is more than two (2) times the Contracted Capacity. Accidental Discharges without immediate oral notification shall be subject to a penalty of up to Five

Thousand Dollars (\$5,000.00) per day, per occurrence, plus the cost of mitigating the impact of the discharge on the Facilities.

8. Billing Procedure. Monthly billings of the Town and payments by the Contracted User shall be in accordance with the Town's standard billing and payment procedures and the Twisp Municipal Code.

9. Pre-discharge Onsite Procedures.

A. The Contracted User agrees to install a pre-treatment facility to capture substances incompatible with the Facilities such as grease, spent grains, spent hops, excess wort, mash, yeast, etc. The purpose of this system is to side-stream high strength BOD and TSS from the brewing process for off-site disposal and thereby minimizing the strength of wastewater discharged into the Facilities. Ecology shall provide written approval of the pre-treatment facility design and operation and maintenance prior to acceptance by the Town.

B. The Town reserves the right to place restrictions on the limits, time, duration and volume of industrial wastewater discharge from Contracted User's pre-treatment facility as necessary to protect the Facilities if circumstances exist that may cause damage to the Facilities, or are necessary for the Town to maintain compliance with any laws, regulations or permits for the Facilities. The Town will notify Contracted User twenty-four (24) hours in advance if such restrictions are necessary.

C. The Contracted User shall prepare and provide to the Town a discharge plan to be implemented in the event of an accidental discharge, or a disposal of a "bad batch" of beer which contains high strength effluent that would not be acceptable to the Facilities.

10. Sampling, Testing and Metering.

A. Monitoring will be required of all industrial wastewater produced by the Contracted User. The Contracted User shall provide the Town's staff the ability to enter upon the premises at any time to sample wastewater at the point of discharge, which shall be metered in the manner approved by the Town. The Contracted User shall provide and maintain a discrete sampler, at their sole cost, approved by the Town for wastewater discharge sampling.

B. All wastewater discharge by Contracted User to the Facilities shall be in isolated batches from the pre-discharge holding tanks that have been previously tested by Contracted User, with pH and flow test results available for review by the Town at all times during working hours.

C. The Town will determine the frequency of sampling, testing and inspection that is required for adherence to this Contract, federal and state laws, and Twisp Municipal Code.

D. The Town intends to sample and perform appropriate lab analysis on the Contracted User's discharge to determine the discharge strengths for compliance and monthly charges. The manner in which and the time that these samples are collected will be determined by the Town. If the Town elects to send the Contracted User's discharge samples to another laboratory for analysis for any reason, the Contractor User agrees to pay for such lab service charges up to \$1,500 annually within fifteen (15) days of submission of a statement to the Contracted User.

11. Remedies if Contracted User Fails to Perform. If Contracted User fails to make any payments or fails to perform any obligation required of the Contracted User under the terms of this Contract, the Town shall be entitled to exercise all rights and remedies allowed by law and equity, including, without limitation, the following remedies which may be cumulative:

A. Collection Action. The Town may commence an action for the collection of past due payments or obligations.

B. Damages and Penalties. The Town may commence an action for any damages to the Town, including without limitation:

I. Costs incurred in connection with removal of debris or obstructions from pipelines, pumping stations and other wastewater system components;

II. Costs to repair the Facilities;

III. Any environmental cleanup costs; and

IV. Any damages, costs, fines, penalties or expenses for which the Town may be obligated as a result of Contracted User's failure to perform under this Contract.

12. Termination of Contract.

A. The Contracted User may terminate this Contract by providing the Town with notice that they no longer intend to continue operation. In that event, this Contract shall be terminated effective on the date indicated on the notice of discontinuance of operation and shall have no further force or effect.

B. If the Contracted User fails to comply with any of the provisions of this Contract, the Town will provide written notice of the violation and a correction time limit as set forth in TMC 13.30.570 before terminating such Industrial User Discharge Contract. If the Contractor User corrects the violation prior to the correction time limit, the Town shall not terminate this Contract. In the event that the Facilities have reached its industrial capacity as set forth in TMC 13.30.480(7)(L), the Town will provide written notice of such, and the date that this Contract shall be terminated. Provided, that in the alternative to termination, the Town and the Contracted User may agree to amend this Contract to reduce or alter the amount of discharge so that the Facilities do not exceed its industrial capacity as set forth in TMC 13.30.480(7)(L). Following termination, this Contract shall have no further force and effect, and the Contracted User shall immediately cease any SIU discharge to the Facilities. The termination shall have no effect with respect to penalties or damages for which Contracted User may be responsible to the Town, Ecology or any other governmental agency with jurisdiction.

13. Insurance.

A. The Contracted User shall procure and maintain in force, without cost or expense to the Town, on or before the commencement date of this Contract and throughout the Contract term, the following insurance:

I. The Contractor User's insurance shall be primary and written on an "Occurrence Form", with a company that has a current AM Best Rating of at least "A-VII" or better, licensed to do business in the State of Washington. The Town shall be named by endorsement, or blanket policy language, as an additional insured on all such liability policies, which policies shall in addition provide that they may not be cancelled or modified for any reason without fifteen (15) days prior written notice to Town. The Contracted User shall provide the Town with a certificate or certificates of such insurance, including the required endorsements, within ten (10) days of the execution of this Contract. The Contracted User's insurance company shall be primary insurance as respect to Town. Any insurance, self insurance or insurance of full coverage maintained by the Town shall be excess of the Contracted User's insurance, which shall not contribute with it. The Town shall not waive the Town's right to subrogation against the Contracted User's insurance coverage.

B. The Contracted User shall maintain insurance as described below at no cost to the Town:

I. Commercial General Liability. Insurance covering liability arising from premises, operations, independent contractors, and

personal injury and advertising injury. Coverage shall be written on ISO Occurrence Form CG00-01 or substitute form providing equivalent liability coverage. The Town shall be named by endorsement, or blanket language, as an additional insured under the Contracted User's Commercial General Liability Insurance Policy with respect to their use of the Facilities.

II. The Contracted User will provide a Pollution Liability Insurance Policy, written on an occurrence basis, in an adequate quantity for its legal liability arising out of Contracted User's activity. The Pollution Liability may be either a separate policy or an endorsement on the Contracted User's General Liability coverage.

III. The Contracted User shall maintain at least the following insurance limits:

a. Commercial General Liability Insurance shall be written with limits no less than One Million Dollars (\$1,000,000.00) for each occurrence, Two Million Dollars (\$2,000,000.00) per project aggregate, and One Million Dollars (\$1,000,000.00) products/completed operations aggregate limit.

b. Pollution Liability Insurance shall be not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) per aggregate.

If any coverage is written on a "claims made" basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the Town.

14. Indemnification. The Contracted User will at all times indemnify and hold harmless and defend the Town, its elected officials, officers, employees, agents and representatives from and against any and all losses, damages, costs, charges, expenses, judgments, and liabilities, including attorney fees (including attorney fees in establishing indemnification of whatsoever nature), directly or indirectly resulting from, arising out of, or relating to one or more claims, as hereafter 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, and all or in part, one or more negligent acts or omissions of the Town or its elected officials, officers, agents, representatives, employees and any other party for or on behalf of the Town. In the event of any claims made or suits filed against the Town, the Town may, at its option, require the Contracted User to resist or defend such action or proceeding at the Contracted User's own costs and expense by counsel reasonably satisfactory to the Town.

The Town will not be liable to the Contracted User for, and the Contracted User hereby releases the Town, from all liability for any injuries, damages, or destruction to all or any part or parts of any property owned or claimed by the Contracted User that directly or indirectly results from, arises out of, or relates to the Contracted User's use of the Facilities or under this Contract, or any part thereof, for any 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 Town or its elected officials, directors, employees, agents, representatives, or any other party acting for or on behalf of the Town.

The indemnification shall survive the expiration or termination of this Contract.

15. Ecology Review and Contracted User's Compliance.

A. This Contract is subject to Ecology's review and approval. If the Ecology determines that this Contract should not be approved or suggests modifications to this Contract, the Contract User agrees to follow the recommendations of Ecology and modify this Contract accordingly, Provided that such modifications are subject to the Town's approval and concurrence with such recommendations from Ecology.

B. If elements of this Contract are not specifically addressed to the requirements of 40 CFR 403 or WAC 173-216-010, then the provisions of such shall be adhered to by the parties.

16. Entire Agreement. This Contract constitutes the entire agreement of the parties with respect to the subject matter herein. Any amendment or modifications of this Contract shall be in writing and approved by the parties hereto.

17. Notices. If notice is required to be provided pursuant to this Contract, said notice shall be via hand delivery or via US Mail to the following addresses:

To Town:
Town of Twisp
P.O. Box 278
118 South Glover
Twisp, WA 98856
509-997-4081

To Contracted User:
Old School House Brewery, Inc.
P.O. Box 577

Winthrop, WA 98862
509-996-3183
206-499-5006

18. Attorney Fees and Venue. In the event that any legal action is necessary to enforce or interpret the provisions of this Contract, the prevailing party shall be entitled to their reasonable attorney fees and costs incurred, including arbitration and appeal. Venue shall be in Okanogan County, Washington.

IN WITNESS WHEREOF, the parties have executed this Contract as of this 3 day of JUNE, 2019.

TOWN:

OLD SCHOOLHOUSE BREWERY
INC.:

By: [Signature]
Soo Ing Moody, Mayor

By: [Signature]
Its: JACOB YOUNG, owner

ATTEST:

By: [Signature]
Randy Kilmer
Clerk-Treasurer

By: _____
Its: _____

APPROVED AS TO FORM:

By: [Signature]
W. Scott DeTro, Town Attorney



STATE OF WASHINGTON)
County of Okanogan)ss:

This is to certify that on the 3 day of June, 2019, before me, the undersigned, personally appeared Jacob Young, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument, and acknowledged himself as the Manager of OLD SCHOOL HOUSE BREWERY, INC., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned therein.

Dated: June 3, 2019.

Amy Grennell

(printed name) Amy Grennell

Notary Public in and for the State of

Washington, residing at Ninthrop, WA

My appointment expires: 11-21-2022.