

CITY OF PROSSER

INDUSTRIAL WASTEWATER USER CONTRACT DESERT WIND VINEYARD, LLC

Effective January 1, 2020
Replaces Previous Contract Dated January 9, 2008, and
Contract Amendments Dated Thereafter

1. Parties:

- 1.1. City of Prosser, a Washington municipal corporation, hereinafter referred to as “the City.”
- 1.2. Desert Wind Vineyard, LLC, a corporation, hereinafter referred to as “Desert Wind.”

2. Industrial Wastewater Terms, Conditions:

- 2.1. This Contract shall commence upon the signing of this Contract, and shall continue until terminated by Desert Wind as provided herein.
- 2.2. Desert Wind may terminate this Contract by providing the City with written notice at least six months prior to the date of Contract termination. If the City is provided with less than six months written Contract termination notice, Desert Wind shall be responsible for payment of the Sewer Availability Fee for six months from the date the notice is given.
- 2.3. Monitoring of the industrial wastewater discharges shall be conducted by the City. The City will own, operate, and maintain industrial wastewater monitoring facilities. Desert Wind will be required to pay for and install the wastewater monitoring facilities.
- 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. Desert Wind may request that duplicate samples be taken at any time during the period of the Contract. The City will make duplicate samples available to Desert Wind 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 Desert Wind'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 Desert Wind to the City's wastewater system which has not passed through the industrial monitoring facility shall be considered a violation of this Contract. The fine for such a violation shall

be \$1,000 per day for every day on which such unauthorized discharge occurs. Desert Wind may appeal any such fines to the Prosser City Council.

- 2.9. Discharges of industrial wastewater to the City's wastewater treatment system 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 Desert Wind's discharge, and represent the combined total of all Desert Wind discharges to the City's wastewater treatment system.
- 2.10. Desert Wind shall provide the City one month notice prior to discharging their industrial wastewater to the City's wastewater system.

3. Rates and Charges:

- 3.1. A Sewer Availability Fee of \$100 per month shall be charged Desert Wind for the available use of the City's wastewater system, and shall be assessed for each month of this Contract. This fee shall apply in addition to the user fees charged for the volume and strength of the wastewater discharged to the City's wastewater system. This fee may be adjusted from time to time to incorporate payment of future debt service resulting from capital improvements made to the City's wastewater system.
- 3.2. Payment of the Sewer Availability Fee shall begin immediately.
- 3.3. 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, and the strength of the wastewater, expressed as pounds of BOD per month, pounds of TSS per month, and pounds of ammonia (NH₃) per month, as determined through testing of the wastewater by the City.
- 3.4. Rates for volume and strength of industrial wastewater discharged shall be as follows:
 - \$3.5555 per 1,000 gallons of wastewater discharged;
 - \$0.3630 per pound of BOD discharged;
 - \$0.4672 per pound of TSS discharged; and
 - \$13.3899 per pound of ammonia (NH₃) discharged.
- 3.5. 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.
- 3.6. If components of Desert Wind'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 listed in Condition 3.4. This rate surcharge provision of the contract shall not apply until one year after the date the contract is executed.

4. Prohibited Discharges:

- 4.1 Desert Wind 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 4.0 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.

5. Billing Procedure:

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

6. Remedies if Desert Wind Fails to Perform:

- 6.1. If Desert Wind fails to make any payment or perform any obligation required of Desert Wind 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 Desert Wind fails to perform this Contract including, without limitation, prohibited discharges, Desert Wind 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 Desert Wind'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, Desert Wind shall be entitled to all rights and remedies allowed by law or equity.

7. Indemnification:

- 7.1 Desert Wind 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, that arise out of Desert Wind's breach of any of its obligations under this contract, 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, Desert Wind, or any other person and all property owned or claimed by the City, Desert Wind, and any affiliate of Desert Wind, or any other person).
- 7.3 The obligations of Desert Wind 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 Desert Wind for, and Desert Wind 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 Desert Wind that directly or indirectly result from, arise out of, or relate to Desert Wind'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 Desert Wind, the City shall promptly notify Desert Wind in writing and Desert Wind 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 Desert Wind and Desert Wind 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 of the City, Desert Wind's liability hereunder shall be only to the extent of Desert Wind's negligence.
- 7.6 It is further specifically and expressly understood that the indemnification provided herein constitutes Desert Wind's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purpose of this indemnification. This Waiver has been mutually negotiated by the parties. _____ initial _____ 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 _____ day of _____, 2019.

CITY OF PROSSER

RANDY TAYLOR, MAYOR

ATTEST:

RACHEL SHAW, CITY CLERK

DESERT WIND WINERY LLC

DULY AUTHORIZED REPRESENTATIVE

CITY OF PROSSER

**INDUSTRIAL WASTEWATER USER CONTRACT
DESERT WIND VINEYARD LLC
Effective January 1, 2019**

**UPDATED SCHEDULE A
ALLOWABLE WASTEWATER DISCHARGES^{3,4}**

Month	Average Daily Flow¹ (gallons per day)	Monthly Flow (gallons per month)	Average Daily BOD Loading¹ (pounds per day)	Monthly BOD Loading (pounds per month)	Average Daily TSS Loading¹ (pounds per day)	Monthly TSS Loading (pounds per month)
January	5,000	155,000	150	4,650	14	434
February	5,000	140,000	150	4,200	14	392
March	5,000	155,000	80	2,480	14	434
Peak Quarterly ²	450,000 gallons		11,330 pounds		1,260 pounds	
April	5,000	150,000	80	2,400	14	420
May	5,000	155,000	80	2,480	14	434
June	5,000	150,000	80	2,400	14	420
Peak Quarterly ²	455,000 gallons		7,280 pounds		1,274 pounds	
July	5,000	155,000	80	2,480	14	434
August	5,000	155,000	80	2,480	14	434
September	5,000	150,000	150	4,500	14	420
Peak Quarterly ²	460,000 gallons		9,460 pounds		1,288 pounds	
October	5,000	155,000	150	4,650	30	930
November	5,000	150,000	150	4,500	30	900
December	5,000	155,000	150	4,650	14	434
Peak Quarterly ²	460,000 gallons		13,800 pounds		2,264 pounds	

Footnotes:

- ¹ Average daily discharges are considered to be the maximum discharges for a month expressed in terms of gallons or pounds per day. They represent the average daily loading over the month based on available test data. They do not represent maximum daily discharge limits.
- ² The Contracted user may exceed the monthly contract allocation so long as the quarterly amount (3-month total) does not exceed the Peak Quarterly amount listed.
- ³ The surcharge provisions found in paragraph 3.6 shall apply to discharges in excess of those listed in Schedule A.
- ⁴ The discharge of toxic substances as described in paragraph 4.1 of the Contract, or harmful waste as described in section 13.34.030 of the Prosser Municipal Code, is prohibited.