SEWER SYSTEM TRANSFER AGREEMENT

BETWEEN

PORT OF WHITMAN COUNTY

AND

PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY

THIS AGREEMENT is made and entered into to be effective as of 6:00 pm, on the 14th day of August, 2012, by and between the Port of Whitman County, Washington, a Washington Municipal corporation and a political subdivision of the State of Washington (hereinafter referred to as "Port"), and the Public Utility District No. 1 of Asotin County, Washington, a Municipal corporation and a political subdivision of the State of Washington (hereinafter referred to as the "PUD").

RECITALS

WHEREAS, it is in the interests of both parties to enter into this agreement, and in the interest of the public health, safety, welfare and convenience of the area covered by this agreement, that this agreement be made and performed; and

WHEREAS, pursuant to State law, the Port and the PUD is authorized to operate a Sewer utility, and to enter into
agreements regarding the transmission, sale and the operation and ownership of facilities therefor; and

WHEREAS, the Port currently owns a sewer system serving its Wilma Site in Whitman County, Washington (herein collectively the "Wilma Sewer System"); and

WHEREAS, there would be efficiencies and economies of scale for the PUD to own and operate the Port's sewer system at Wilma; and

WHEREAS, the Port desires to transfer ownership of the Wilma Sewer System and attendant assets to the PUD and the PUD wishes to accept ownership and control of such assets and Wilma Sewer System; and

WHEREAS, the Port Board of Commissioners and the PUD Board of Commissioners have approved this agreement by their respective resolutions, Resolution No. ______ and Resolution No. 12-390, and authorized its execution, delivery and performance;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, IT IS AGREED BY THE PORT AND THE PUD, as follows:

Section 1. Definitions. For the purposes of this agreement, the following words and terms shall have the following meaning:
(A) Port shall mean the Port of Whitman County, Washington, the governing body of which is the Port Board of Commissioners.

(B) Wilma Sewer System shall mean the sewer collection system, the pipes, pumps, drain field and facilities and any additions or betterments thereto comprising the sewer system facilities owned by the Port at Wilma, together with any additions or betterments thereto.

(C) PUD shall mean the Public Utility District No. 1 of Asotin County, Washington, a Washington Municipal Corporation, the governing body of which is their Board of Commissioners.

(D) Title Transfer Date shall mean the date when ownership and control of the Wilma Sewer System and other assets are transferred to the PUD, which will be the date written notice is provided by the PUD manager that all conditions specified in Section 5 herein have been met.

(E) Effective Date. The effective date of this agreement shall be 12:01 a.m. on the ___ day of August, 2012.
Section 2. Authority for Agreement and Term: This agreement is made and entered into pursuant to the authority granted the Port and the PUD by the provisions of RCW 53.08.010 and 53.08.240 and RCW 54.16.120 and 54.16.230.

Section 3. Transfer of Wilma Sewer System and Other Assets to the PUD and Assumption of Indebtedness. The Port Board of Commissioners have determined that it is in the public interest and conducive to the public health, safety, welfare and convenience to transfer to the PUD all property, assets, obligations of the Wilma Sewer System, including the system itself and sewer mains, transmission lines, lift stations, lagoon system and drain fields. The PUD Board of Commissioners has determined that it is willing to accept ownership of all of the property and assets of the Wilma Sewer System, including the sewer system itself.

(A) Transfer of Port Facilities and Other Assets. All Wilma Sewer System facilities, including all pipes, lines, lift stations, drain field, lagoon system and other appurtenances thereto depicted on the map in Exhibit A, together with all other assets of the Wilma Sewer System, including tools and other equipment used to maintain the system, as well as all inventory of
pipe and other hardware, shall be conveyed to the PUD by appropriate Easement, Bill of Sale and Deed and be effective on the Title Transfer Date. Costs and expenses of all such transfers, including recording of any such documents necessary to transfer ownership of facilities, easements and other tangible and intangible property from the Port to the PUD shall be borne by the Port. All current revenues, or receipts and expenditures, payable as of the effective date shall be accounted for by the Port and assigned and transferred to the PUD. After the Title Transfer Date the PUD shall own and shall be responsible for the maintenance and operation of the facilities constituting the former Wilma Sewer System shall be made a part of the PUD utility system. The PUD shall be entitled to receive all such revenues as may be derived from the system as of the effective date, subject to reimbursement to or charge back to the Port if Title Transfer does not occur due to a failure of conditions set forth in Section 5 herein. All the facilities and property to be acquired by the PUD pursuant to this agreement shall be used for the
benefit of the people and businesses included within the territory depicted on Exhibit A.

(B) The PUD shall operate and maintain and provide such utilities and facilities at Wilma on a reasonable and non-discriminatory basis and in accordance with state and federal standards.

Section 4. Other Matters Incident to the PUD Acquiring, Owning, Operating and Maintaining the Wilma Sewer System.

(A) Records and Covenants. The Port has provided to the Manager of the PUD copies of all records, as-built plans, specifications, easements, rights-of-way, franchises, operations, maintenance manuals, permit applications, maps, sewer studies, construction inspection records, operation and maintenance records, system maps, and similar data in connection with the Wilma Sewer System in its possession. The Port shall execute and record all documents necessary to convey all Wilma Sewer System easements and franchises in a manner that will render those easements and franchises fully effective and enforceable within one hundred twenty (120) days of the Title Transfer Date.
(B) **Service Level.** All sewer customers situated in the Port shall be accorded the same service all other similarly situated PUD customers receive. The PUD shall operate and maintain the Wilma Sewer System in accordance with maintenance standards accepted within the industry.

(C) **Rates and Billings.** The PUD shall bill all customers for services in service area of the Wilma Sewer System shown in Exhibit A in conformity with PUD sewer plan and current rate structure. After the transfer date, the customers of the Port within the Wilma Sewer System shall become customers of the PUD and such statutes, ordinances, rules and regulations governing sewer rates, charges, fees and services and other matters governing such services shall pertain to all such former customers.

Section 5. **Conditions to be met at the Port’s expense prior to PUD Acquiring and Owning the Wilma Sewer System.**

Prior to the transfer of the Wilma Sewer System the items described below will be resolved to the PUD’s satisfaction. The estimated total cost of the items described below is $70,000.00 with the exception of Item E whose estimated costs cannot be
determined until videoing of the sewer distribution main is completed and reviewed. PUD staff will direct, contract for and perform the work described. Worked performed by the PUD will be paid by the Port in a timely manner upon presentation of an invoice for services rendered. Services contracted for or completed by someone other than PUD staff will be directly billed to the Port.

(A) Lift Stations control panels will be checked for proper operation and upgraded as needed.

(B) Lift Stations pumps will be removed repaired or replaced as needed.

(C) Lift Stations probes and floats will be checked for proper operation and replaced if necessary.

(D) The sewer distribution system will be flushed and the septic tank will be pumped.

(E) The sewer distribution system will be videoed and any issues will be resolved including replacement of sewer mains as needed.

(F) Buried manhole covers will be raised to ground level.

(G) Sewer Lagoon liners will be removed tested and disposed of in accordance with state standards.

(H) Vegetation in Sewer Lagoons will be removed.
Section 6. Design and Construction Standards. Design and construction standards for any facilities constructed by the Port after the date of this agreement shall be required to conform to the then prevailing written specifications, codes, methods, and standards required by the PUD for construction in unincorporated areas to ensure that service connections conform to the PUD System requirements.

Section 7. Maintenance and Operations. Maintenance and operation of all facilities covered by this agreement shall be consistent with standard engineering practice and in accordance with all applicable laws and requirements. The PUD shall administer and respond to all reasonable questions, requests, and comments from Port residents, staff and officials relating to the former Wilma Sewer System after the Title Transfer Date.

Section 8. Insurance and Liability. From and after the Title transfer Date the PUD agrees to save harmless and indemnify the Port and the Port Board of Commissioners, its predecessors and successors, individually and collectively, against damage to the Wilma Sewer System facilities constituting the former Port System, for economic loss, environmental remediation, or claims by third parties for personal injury, death or property damage arising from performance of its
operation, maintenance and construction activities and administrative duties under this agreement. The parties acknowledge that the PUD is fully self-insured at this time. Until the Title Transfer Date, the Port agrees to save harmless and indemnify the PUD against damage to such facilities, economic loss, environmental remediation, or claims by third parties for personal injury, death or property damage arising from the operation, maintenance and construction activities of the Port.

Section 9. **Port System Employees.** The PUD shall not be required to assume employment of any Port employee on the transfer date.

Section 10. **Notices and Communications.** Any notice or communication to be given by the Port to the PUD under this agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

Asotin County PUD  
ATTN: Tim Simpson, General Manager  
P.O. Box 605  
Clarkston, WA 99403

Any notice or communication to be given by the PUD to the Port under this agreement shall be deemed properly given if delivered, or if mailed postage prepared and addressed to:
Port of Whitman
ATTN: Joe Poiré
302 N. Mill Street
Colfax, WA  99111

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the Port or the PUD giving notice thereof to the other as herein provided.

Section 11. Entire Agreement. This agreement supersedes any and all other agreements, either oral or in writing, between the parties and contains all of the covenants and agreements between them. Each party acknowledges that no representation, inducement, warranty, promise or agreement, orally or otherwise, has been made by either party, or anyone acting on behalf of any party, which is not embodied herein. Any modification of or amendment to this agreement shall be effective only if it is in writing and signed by the parties.

Section 12. Assignments. No part of this agreement or any rights, duties, or obligations described herein shall be assigned or delegated to another without the express written consent of both parties hereto.

Section 13. Mutual Cooperation. The PUD and Port recognize that to realize the full benefits that are contemplated by the understandings and undertakings memorialized in this agreement
it will be necessary for both parties to cooperate with each other in good faith, looking to the public interest and purposes to be achieved by the efficient performance of this agreement. They therefore agree to cooperate unselfishly in order to realize the greatest good for the publics they serve.

Section 14. Severability. In the event that any portion of this agreement is determined by a final order of a court of competent jurisdiction to be invalid, void or unenforceable, such determination shall not affect the validity of the remaining provisions hereof.

DATED to be effective as of this __ day of July, 2012.

PORT OF WHITMAN

By: ____________________________
    Joe Poire, Executive Director

PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY, WASHINGTON

By: ____________________________
    Tim Simpson, General Manager

Approved as to Form:

By: ____________________________
    Bruce Ensley, Port Attorney

Approved as to Form:

By: ____________________________
    Scott C. Broyles, PUD Counsel

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RESOLUTION NO. 12-390

PUBLIC UTILITY DISTRICT NO. 1
OF ASOTIN COUNTY, WASHINGTON

A RESOLUTION PROVIDING FOR THE TRANSFER OF OWNERSHIP OF THE PORT OF WHITMAN COUNTY (PORT), PORT OF WILMA SANITARY SEWER SYSTEM TO THE ASOTIN COUNTY PUBLIC UTILITY DISTRICT (DISTRICT).

WHEREAS, pursuant to State law, the Port and the District are each authorized to operate wastewater collection and treatment systems, and to enter into agreements regarding the transmission, disposal and treatment of wastewater and the operation and ownership of facilities therefore; and

WHEREAS, the Port currently operates a sanitary sewer collection system at the Port of Wilma located in the southeast corner of Whitman County adjacent to the Snake River and the District service territory; and

WHEREAS, the District has authority under RCW 54 to acquire, construct, operate, maintain, and add to sewage systems; and

WHEREAS, the Port desires to transfer ownership of its sanitary sewer system and other numerated assets to the District and the District wishes to accept ownership and control of such assets and system:

NOW, THEREFORE, BE IT RESOLVED, that in consideration of the mutual desire and interests by both parties, an agreement for the transfer of ownership of the Port sanitary sewer system to the District will be entered into this day and the system transfer effective on a date mutually agreed upon.

ADOPTED this 14th day of August, 2012.

Commissioner Don Nuxoll, President

Commissioner Judy Ridge, Vice President

Commissioner Gary Hicks, Secretary