

**CITY OF WEST RICHLAND
RESOLUTION NO. 07-23**

**A RESOLUTION OF THE CITY OF WEST RICHLAND, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN AND EXECUTE A WATER SYSTEM
DEVELOPMENT FEE AND SEWER SYSTEM DEVELOPMENT FEE PREPAYMENT
AGREEMENT WITH FRANK TIEGS LLC.**

WHEREAS, the Water System Development Fee per West Richland Municipal Code Section 13.45.025 is imposed as a connection charge pursuant to RCW Chapters 35.92 and 82.02, and the Growth Management Act on all premises which have not yet connected to the City's water system or which have not paid their equitable share of the cost of the existing system; and

WHEREAS, the Sewer System Development Fee per West Richland Municipal Code Section 13.09.030 is imposed as a connection charge pursuant to RCW Chapters 35.92 and 82.02 and the Growth Management Act on all premises which have not yet connected to the City's sewer system or which have not paid their equitable share of the cost of the existing system; and

WHEREAS, the expansion and improvement of the City's water and sewer system are necessary to meet demands prompted by development; and

WHEREAS, Water System Development fees collected per West Richland Municipal Code Section 13.45.025 are deposited in the cumulative reserve fund for water system development created by West Richland Municipal Code Chapter 3.40 and disbursed therefrom for capital improvements to the City's water system; and

WHEREAS, Sewer System Development fees collected per West Richland Municipal Code Section 13.09.030 are deposited in the cumulative reserve fund for water system development created by West Richland Municipal Code Chapter 3.36 and disbursed therefrom for capital improvements to the City's sewer system; and

WHEREAS, the Developer, Frank Tieg LLC, wishes to prepay the City for both the Water System Development Fee per West Richland Municipal Code Section 13.45.025 and the Sewer System Development Fee per West Richland Municipal Code Section 13.09.030 for 1,000 equivalent single family residential units; and

WHEREAS, the City plans on using said prepaid Water System Development Fee and Sewer System Development Fee to design and construct capital improvements to the City's water system and sewer system per West Richland Municipal Code Chapters 3.36 and 3.40; and

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF WEST RICHLAND, WASHINGTON, does hereby resolve as follows:

Section 1. The City Council of West Richland, Washington authorizes the Mayor to sign and execute the Water System Development Fee and Sewer System Development Fee Prepayment Agreement as shown in Exhibit 'A' with Frank Tieg LLC.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, this 17th day of January, 2023.


Brent Gerry, Mayor

ATTEST:


Stephanie Haug, City Clerk

APPROVED TO FORM:


Bronson Brown, City Attorney

WHEN RECORDED RETURN TO:

**City of West Richland
3100 Belmont Blvd., Suite 106
West Richland, WA 99353**

**WATER SYSTEM DEVELOPMENT FEE AND SEWER SYSTEM
DEVELOPMENT FEE PREPAYMENT AGREEMENT**

**Benton County Parcel No. 1-3507-100-0001-000, 1-0297-103-0005-000, 1-0297-103-0006-000,
1-0297-103-0007-000, 1-0297-103-0008-000, 1-0297-105-0005-000, 1-0297-105-0006-000,
1-0297-105-0007-000 & 1-0297-105-0008-000**

THIS AGREEMENT is entered into this 17th day of January, 2023, by and between the **City of West Richland**, a municipal corporation, hereinafter referred to as the "City", and **Frank Tiegs LLC**, a limited liability company, hereinafter referred to as the "Developer".

I. Recitals

WHEREAS, the Water System Development Fee per West Richland Municipal Code Section 13.45.025 is imposed as a connection charge pursuant to RCW Chapters 35.92 and 82.02, and the Growth Management Act on all premises which have not yet connected to the City's water system or which have not paid their equitable share of the cost of the existing system; and

WHEREAS, the Sewer System Development Fee per West Richland Municipal Code Section 13.09.030 is imposed as a connection charge pursuant to RCW Chapters 35.92 and 82.02 and the Growth Management Act on all premises which have not yet connected to the City's sewer system or which have not paid their equitable share of the cost of the existing system; and

WHEREAS, the expansion and improvement of the City's water and sewer system are necessary to meet demands prompted by development; and

WHEREAS, Water System Development fees collected per West Richland Municipal Code Section 13.45.025 are deposited in the cumulative reserve fund for water system development created by West Richland Municipal Code Chapter 3.40 and disbursed therefrom for capital improvements to the City's water system; and

WHEREAS, Sewer System Development fees collected per West Richland Municipal Code Section 13.09.030 are deposited in the cumulative reserve fund for water

system development created by West Richland Municipal Code Chapter 3.36 and disbursed therefrom for capital improvements to the City's sewer system; and

WHEREAS, the Developer, Frank Tiegs LLC, wishes to prepay the City for both the Water System Development Fee per West Richland Municipal Code Section 13.45.025 and the Sewer System Development Fee per West Richland Municipal Code Section 13.09.030 for 1,000 equivalent single family residential units; and

WHEREAS, the City plans on using said prepaid Water System Development Fee and Sewer System Development Fee to design and construct capital improvements to the City's water system and sewer system per West Richland Municipal Code Chapters 3.36 and 3.40; and

NOW, THEREFORE, the Parties hereby agree as follows:

II. Agreement

Under the terms of this agreement, the parties do hereby agree as follows:

Section 1) Developer's Responsibilities

- a) Developer shall pay to the City the Water System Development Fee per West Richland Municipal Code Section 13.45.025 to the City for 1,000 equivalent single family residential units for a 1" water meter per the City's Master Fee Schedule for parcels that provide a separate irrigation system that does not rely on City potable water for irrigation purposes within 30 calendars days of the execution of this agreement.

1,000 SFR ERU - 1" water meters (dwelling unit) x (\$5,586 per dwelling unit - \$2,500 per dwelling unit credit for separate irrigation system that does not rely on city potable water for irrigation purposes) = \$3,086,000 (three million eight-six thousand dollars).

- b) Developer shall pay to the City the Sewer System Development Fee per West Richland Municipal Code Section 13.09.030 to the City for 1,000 equivalent single family residential units based on a 1" water meter per the City's Master Fee Schedule within 30 calendars days of the execution of this agreement.

1,000 SFR ERU (dwelling unit) x \$3,534 per dwelling unit = \$3,534,000 (three million five hundred thirty-four thousand dollars).

- c) Developer shall at execution of this agreement collaborate with the City to identify an approximately 275' x 275' parcel of land or portion of a parcel of land the Developer owns to be utilized for a future City potable water well for the City's water system pressure zone #3. The proposed location of said parcel of land shall be mutually agreed upon between the City and Developer within 90 days of execution of this agreement, unless extended by the City, located adjacent

to existing Benton Rural Electric Association three-phase electrical power, fronting a City roadway or acceptable access easement to a City roadway, adjacent to a City 12" or larger water main in City's water system pressure zone 3 and be approved by Ecology to be used for an additional point of withdrawal for the City's ground water rights.

- d) Developer hereby grants permission for the City to drill a groundwater well, at the City's cost, on said parcel of land as part of the City's process to obtain Ecology approval for an additional point of withdrawal for the City's ground water rights.
- e) Developer shall record a statutory warranty deed with Benton County transferring ownership, at no cost to the City, to the City of an approximately 275' x 275' parcel of land within 30 calendar days of the City receiving Ecology approval to utilize said parcel of land and groundwater well for an additional point of withdrawal for the City's ground water rights.
- f) Developer understands that multiple parcels of land may need to be identified and go through the process outlined above for the City to receive Ecology approval to utilize a single parcel of land and groundwater well for an additional point of withdrawal for the City's ground water rights.

Section 2) City's Responsibilities

- a) City shall reserve sanitary sewer capacity at the City's North Wastewater Treatment Plant for 1,000 single family residential equivalent units for the Developer's following parcels of land: portion of Benton County parcel #1-3507-100-0001-000 as described in **Exhibit A** and as shown in **Exhibit B**, The Heights at Red Mountain Ranch Phase 4, Tracts U, V, W and X, recorded in Volume 15 of Plats at Page 739, records of Benton County, Washington (AFN 2022-016564) as shown in **Exhibit C**, and The Heights at Red Mountain Ranch Phase 2, Tracts J, K, L and M, recorded in Volume 15 of Plats at Page 706, records of Benton County, Washington (AFN 2021-013106) as shown in **Exhibit D**. A single family residential equivalent unit is equal to 218 gallons per day with a five-day biochemical oxygen demand less the 300 parts per million by weight and containing less than 350 parts per million by weight of suspended solids.
- b) City shall reserve potable water capacity, for non-irrigation purposes, for 1,000 single family residential equivalent units for the Developer's following parcels of land: portion of Benton County parcel #1-3507-100-0001-000 as described in **Exhibit A** and as shown in **Exhibit B**, The Heights at Red Mountain Ranch Phase 4, Tracts U, V, W and X, recorded in Volume 15 of Plats at Page 739, records of Benton County, Washington (AFN 2022-016564) as shown in **Exhibit C**, and The Heights at Red Mountain Ranch Phase 2, Tracts J, K, L and M, recorded in Volume 15 of Plats at Page 706, records of Benton County, Washington (AFN 2021-013106) as shown in **Exhibit D**. A single family residential equivalent unit is equal to 462 gallons per day.

- c) If the City abandons plans to construct a potable water well for the City's water system on the said approximate 275' x 275' parcel of land deeded to the City by the Developer or does not begin construction by January 1, 2033, the City agrees to deed said parcel of land back to the Developer, at no cost to the Developer.

Section 3) Allocation of Reserved Water and Sewer Capacity

- a) The City shall allocate a portion of the water and sewer capacity reservation up to a total of 1,000 single family residential equivalent units with each of the City's Notice of Decision associated with Developer's division of land application to the City for portions of land as described in **Exhibit A** and as shown in **Exhibit B** or as allocated by the Developer's notice in writing to the City for portions of land as shown in **Exhibit C** or **Exhibit D**.
- b) An allocation of sewer and water made in accordance with this provision shall run with the specific portion of a parcel of land identified in the Developer's written notice or in the City's Notice of Decision and shall not be transferable to another portion of a parcel of land.
- c) The City shall only allocate portions of the water and sewer capacity reservation to portions of the parcel of land as described in **Exhibit A** and as shown in **Exhibit B, Exhibit C, and Exhibit D** and only to those portions of the parcel of land that are contiguous to the City's existing water and sewer retail service areas.
- d) Developer agrees that the City's allocation of said 1,000 single family residential equivalent unit water and sewer reservations shall be limited to a maximum issuance of 300 building permits for single family residential equivalent units in calendar year 2023, maximum issuance of 300 building permits for single family residential equivalent units in calendar year 2024 plus any unused allocations from 2023 calendar year and the remaining balance or 400 building permits for single family residential equivalent units, whichever is greater, in calendar year 2025 or later.
- e) Developer and City agrees that on January 1, 2029, any remaining allocations of the 1,000 single family residential equivalent units for water and sewer not issued to a specific lot through the City's issuance of a building permit shall automatically convert to a Water System Development Fee credit of \$3,086 per single family residential equivalent unit and a Sewer System Development Fee credit of \$3,534 per single family residential equivalent unit. The difference between said credit and the then current Water System Development Fee and Sewer System Development Fee per the City's Master Fee Schedule for each lot shall be the balance due and collected prior to the issuance of each building permit.

Section 4) Termination

- a) This Agreement shall terminate if Developer does not make the required Water System Development Fee payment, \$3,086,000 (three million eighty-six thousand dollars), per Section 1(a) above, to the City within 30 calendar days of the execution of this Agreement.
- b) This Agreement shall terminate if Developer does not make the required Sewer System Development Fee payment, \$3,534,000 (three million five hundred and thirty-four thousand dollars), per Section 1(b) above, to the City within 30 calendar days of the execution of this Agreement.

Section 5) General Indemnification

The City and Developer each agree to defend and indemnify the other and its elected and appointed officials, officers, employees and agents against all claims, losses, damages, suits, and expenses, including reasonable attorneys' fees and costs, to the extent they arise out of, or result from, the negligence or willful misconduct of the indemnitor or its elected or appointed officials, officers, employees and agents in the performance of this Agreement. The indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees or agents of the indemnitor or of any contractor or subcontractor or indemnitor. This provision shall survive the termination of this Agreement.

Section 6) Captions

The paragraph and subsection captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement.

Section 7) Entire Agreement

This Agreement contains the entire Agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties.

Section 8) Governing Law

This Agreement shall be interpreted in accordance with the laws and court rules of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the parties agree that such action shall be brought in a court of competent jurisdiction situated in Benton County, Washington.

Section 9) No Third Party Rights

Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

Section 10) Amendment or Waiver

This Agreement may not be modified or amended except by written instrument approved by resolution or ordinance duly adopted by the City. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

Section 11) Force Majeure. In the event City is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes and unforeseen labor conditions not attributable to City's employees, City shall not be deemed in breach of provisions of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, thereto duly authorized, as of the dates set forth below their respective signatures.

City of West Richland



Brent Gerry, Mayor

ATTEST:



Stephanie Haug, City Clerk

APPROVE TO FORM:



Bronson Brown, City Attorney

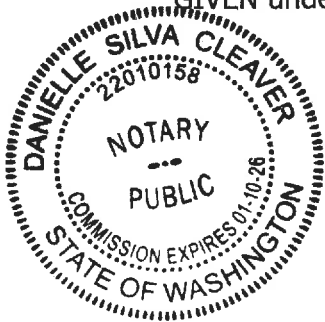
FRANK TIEGS LLC

Frank Tieg
Frank Tieg, Managing Member Frank Tieg LLC

STATE OF WASHINGTON)
:SS
County of Benton)

On this day personally appeared before me **FRANK TIEGS**, to me known to be Managing Member of FRANK TIEGS, LLC, Washington State limited liability company that executed the foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said limited liability company.

GIVEN under my hand and official seal this 30th day of December, 2022



NOTARY PUBLIC in and for the State of Washington
residing at West Richland, WA
My Commission Expires: 01-10-2026

Danielle Silva Cleaver

STATE OF WASHINGTON)
:SS
County of Benton)

On this day personally appeared before me **BRENT GERRY**, to me known to be the Mayor of the City of West Richland, that executed the foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of the City of West Richland.

GIVEN under my hand and official seal this 17th day of January, 2023



NOTARY PUBLIC in and for the State of Washington
residing at Benton City, WA
My Commission Expires: 09-05-2025

Paula Kauw

EXHIBIT A

LEGAL DESCRIPTION

A PORTION OF THE LANDS DESCRIBED AS PARCEL W IN STATUTORY WARRANTY DEED RECORDED UNDER BENTON COUNTY AUDITOR'S FILE NUMBER 2011-034588 ON DECEMBER 5, 2011 AND CURRENTLY KNOWN AS TAX PARCEL NUMBER 1-3507-100-0001-000, LOCATED IN THE SOUTH HALF OF SECTION 35, TOWNSHIP 10 NORTH, RANGE 27 EAST OF THE WILLAMETTE MERIDIAN, CITY OF WEST RICHLAND, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 35, MARKED BY A 3 INCH BRASS CAP, BEING NORTH 89°37'04" EAST A DISTANCE OF 2762.96 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 35, ALSO MARKED BY A 3 INCH BRASS CAP; THENCE SOUTH 89°37'04" WEST ALONG THE SOUTH LINE OF SAID SECTION 35 A DISTANCE OF 623.05 FEET; THENCE NORTH 01°04'39" WEST A DISTANCE OF 35.00 FEET TO THE INTERSECTION WITH THE NORTHERLY RIGHT OF WAY MARGIN OF RUPPERT ROAD AS ESTABLISHED PER DEEDS FILED UNDER AUDITOR FILE NUMBERS 313688 AND 2019-041885 RECORDS OF THE BENTON COUNTY AUDITOR, AND BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89°37'04" WEST BEING ALONG SAID NORTHERLY RIGHT OF WAY MARGIN OF RUPPERT ROAD, BEING A 35.00 FOOT OFFSET FROM THE CENTERLINE THEREOF, A DISTANCE OF 2,102.89 FEET TO THE BOUNDARY COMMON WITH BENTON REA (SUBSTATION PARCEL) PER STATUTORY WARRANTY DEEDS FILED UNDER AUDITOR'S FILE NUMBERS 1995-014191 AND 1995-014192;

THENCE NORTH 00°51'50" WEST A DISTANCE OF 356.52 FEET TO THE NORTHEAST CORNER OF SAID SUBSTATION PARCEL;

THENCE SOUTH 89°35'23" WEST A DISTANCE OF 361.58 FEET TO THE NORTHWEST CORNER OF SAID SUBSTATION PARCEL;

THENCE SOUTH 00°55'15" EAST A DISTANCE OF 361.48 FEET TO THE INTERSECTION WITH SAID SUBSTATION PARCEL AND SAID NORTHERLY RIGHT OF WAY MARGIN OF RUPPERT ROAD;

THENCE SOUTH 89°35'39" WEST BEING ALSO ALONG SAID NORTHERLY RIGHT OF WAY MARGIN, BEING A 30.00 FOOT OFFSET FROM THE CENTERLINE THEREOF, A DISTANCE OF 2,352.22 FEET TO THE INTERSECTION WITH THE WESTERLY BOUNDARY OF SAID PARCEL W, BEING ALSO THE WEST LINE OF SAID SECTION 35;

THENCE NORTH 00°07'19" EAST ALONG SAID WESTERLY BOUNDARY AND SAID WEST LINE OF SECTION 35 A DISTANCE OF 2,583.37 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 35; THENCE LEAVING SAID WESTERLY BOUNDARY, NORTH 89°43'07" EAST ALONG THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 35 A DISTANCE OF 3,761.96 FEET;

THENCE SOUTH 65°16'11" EAST A DISTANCE OF 1,111.16 FEET TO THE INTERSECTION WITH A LINE BEING THE WEST OF THE EAST 623.00 FEET OF SAID SECTION 35;

THENCE SOUTH 01°04'39" EAST ALONG SAID WEST LINE A DISTANCE OF 2,099.14 FEET TO THE TRUE POINT OF BEGINNING.

HAVING AN AREA OF 11,972,193 SQUARE FEET, 274.84 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESERVATIONS AND RESTRICTIONS OF RECORD.

EASEMENT KEY

- ① 75' POWER EASEMENT TO B.P.U.D. PER AFN 624742 (NOW UNDER B.P.A. JURISDICTION PER AFN 895196)
- ② 100' POWER EASEMENT TO B.R.E.A. PER AFN 2020-009788
- ③ 10' EASEMENT FOR ROADWAY SLOPE AFN 725892
- ④ 15' POWER EASEMENT TO B.R.E.A. PER AFN 2003-006065 & UNDETERMINED WIDTH POWER EASEMENT PER AFN 312505
- ⑤ 15' VERIZON COMMUNICATIONS EASEMENT PER AFN 2003-023126
- ⑥ 12' PUBLIC UTILITY EASEMENT PER AFN 2019-041885
- ⑦ 20' POWER EASEMENT TO B.R.E.A. PER AFN 2018-019276
- ⑧ 30' ACCESS & UTILITY EASEMENT TO CITY OF WEST RICHLAND PER AFN 2014-026481 (RE-RECORDING OF AFN 2012-006884) DEPICTED ON SURVEY NO. 4257
- ⑨ 10' IRRIGATION EASEMENT TO LEWIS AND CLARK IRRIGATION COMPANY, LLC PER AFN 2021-047497



05/03/2022

 <p>PBS Engineering and Environmental Inc. pbsusa.com</p>	<p>DRAWN BY: DWW</p>	<p>SCALE: N/A</p>	<p>DATE: 05/03/2022</p>
	<p>CHECKED BY: ROP</p>	<p>PROJECT NO.: 66113.002</p>	<p>SHEET <u>1</u> OF <u>2</u></p>

