RETURN TO:

YAKIMA CITY CLERK

129 N. 2ND STREET

YAKIMA, WA 98901

## 

**DOCUMENT TITLE: CITY OF YAKIMA WASTEWATER UTILITY EASEMENT**

**GRANTOR:**

**GRANTEE:** City of Yakima

**ABBREVIATED LEGAL DESCRIPTION:**

**ASSESSOR'S TAX/PARCEL NUMBER(S)**:

# CITY OF YAKIMA WASTEWATER UTILITY EASEMENT

# TO THE CITY OF YAKIMA, WASHINGTON

## For good and valuable consideration and other mutual benefits, the receipt of which are hereby acknowledged, (Grantor) hereby conveys and warrants to the CITY OF YAKIMA, a municipal corporation of the State of Washington (Grantee), its successors and assigns, an easement on, over, under, along and across, real property, described as follows for the purposes of constructing, reconstructing, inspecting and maintaining a City of Yakima wastewater pipeline and necessary appurtenances and all actions and use of equipment or access necessary to fulfill those purposes, described as follows for the purposes outlined herein:

(*SEE EXHIBIT ­­­­­­­­­\_\_\_\_\_\_\_\_\_\_, ATTACHED HERETO*)

Or

*INSERT LEGAL DESCRIPTION OF PROPERTY AND EASEMENT HERE*

Additional terms of this easement are as follows:

1. Grantee may construct, maintain, inspect and operate such permanent or temporary surface or underground structures within the easement as are required for its wastewater facilities and appurtenances and their inspection, operation, or maintenance, and its agents or employees may enter the easement for the purpose of constructing, reconstructing, inspecting, maintaining, operating, or relocating its wastewater facilities, lines and appurtenances (the “Facilities”). Grantor retains the right to use the easement area for all purposes not inconsistent with the uses granted to the Grantee herein. This easement does not constitute a conveyance of the property or of the minerals therein and thereunder, but grants only the rights expressly provided herein.
2. No permanent or temporary surface or underground structure or facility, including public or private utility line(s) or other improvements, shall be constructed or located within the easement without the prior written consent of the Public Works Director or his/her designee of the Grantee, which consent shall not be unreasonably withheld. All construction, maintenance and operation activities with respect to the easement, and any structures located therein or thereon, must comply with federal, state, and local law. Construction, operation, and maintenance with respect to the easement shall also conform to prevailing industry standards. In the event permanent or temporary surface or underground structures, facilities or improvements are located within the easement with written consent of Grantee, Grantor, at its sole cost and expense, shall provide to the Grantee a copy of the as-built plans associated with the improvements within ten (10) days of completion of construction.
3. The easement area shall be kept open, accessible, and passable at all times with the exception that obstructions to accessibility shall be approved in writing by the Grantee’s Public Works Director or their designee prior to their installation or construction. Notwithstanding anything to the contrary in this easement, at all times: Grantor shall have the right to locate within the easement such things as operable automobiles (and other operable vehicles), materials, product, and other movable items (collectively, the “Allowed Items”); provided that Grantor shall remove such Allowed Items from the easement prior to Grantee’s entry onto the easement so long as Grantee has provided Grantor with any advance notice required herein prior to Grantee’s entry onto to the easement, and provided, further, that, in the event of an emergency where Grantee is unable to provide Grantor with advance notice of such entry, Grantee may move such Allowed Items.
4. No grade change in excess of one (1) foot in elevation shall be allowed within the easement without the prior written consent of the Grantee’s Public Works Director or their designee, which consent shall not be unreasonably withheld.

1. No trees, bushes, or other vegetation other than grass shall be planted within the easement without the prior written consent of the Public Works Director or his/her designee of the Grantee. Grantor acknowledges that any plantings in the easement, including those for which consent is provided, are subject to removal by the Grantee if necessary to use the easement, and Grantee shall not be required to replace such vegetation, or pay for replacement of such vegetation.
2. Private wastewater facilities shall not be connected to the City of Yakima wastewater pipeline owned and/or controlled by the Grantee without prior approval and required permits from the Grantee. Any such private facilities shall conform to all regulations, state, federal or local laws, and permit requirements existing at the time of the connection.
3. Except as set forth in Paragraph 3 above, Grantor shall not store, use, manufacture or dispose of any materials within this easement except in compliance with all federal, state and local laws. In no case may Grantor store, use, manufacture, or dispose of hazardous materials or materials which constitute a public health hazard except in compliance with all applicable federal, state and local laws.
4. The Grantee shall, within a reasonable time after completion of construction or maintenance work, restore the surface condition of the easement to a state equal to or better than its state immediately prior to the construction or maintenance, subject to Paragraph 5, above. The Grantor agrees to maintain the surface of the easement after the restoration work is performed by the Grantee. The Grantee shall use all reasonable efforts not to interfere with the Grantor’s use and enjoyment of the rest of the property and any improvement thereon while doing work or restoration work.
5. In the event the Grantor should sell or lease the property upon which the easement may be located, the sale or lease will be subject to the restrictions and conditions described herein which will be binding upon the Grantor’s heirs, successors, and assigns. This easement shall run with the land.

1. Indemnification.
2. Grantor agrees to release, defend, indemnify, hold harmless, and covenant not to bring suit, the City, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from and against any and all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this easement or the use thereof, or the acts, failures to act, errors or omissions of the Grantor, or any of Grantor’s agents, arising from or in connection with this easement or the use thereof, or in any way related to the Grantor’s activities in the easement area, including any liability imposed by law for the clean-up or damages caused by the release or disposal of hazardous materials within the easement by Grantor or its predecessors in interest.

B. The obligations of the Grantor under the indemnification provisions of this paragraph shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its elected or appointed officials, officer, agents, employees or contractors. The provisions of this section, however, are not to be construed to require the Grantor to hold harmless, defend or indemnify the City as to any claim, demand, suit or action which arises out of the sole negligence of the City. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantor’s waiver of immunity under Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. In the event that any court of competent jurisdiction determines that this Easement is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

C. Notwithstanding any other provisions of this Section, the Grantor assumes the risk of damage to its facilities, structures or other property located in the easement parcel, if any, from activities conducted by the City, its officers, elected or appointed officials, agents, employees, and contractors. The Grantor releases and waives any and all claims against the City, its elected or appointed officials, officers, agents, employees and contractors for damage to or destruction of the Grantor’s facilities, structures or other property caused by or arising out of activities conducted by the City, its officers, agents, employees and contractors, in the easement subject to this Easement, including the easement parcel, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious action on the part of the City, its officers, agents, employees or contractors.

D. Grantor shall be solely responsible for and shall defend, indemnify and hold the City, its elected and appointed officials, officers, agents, employees and contractors, harmless from and against any and all costs, claims, liabilities, including reasonable attorneys’ fees and costs, arising from or in connection with the removal, cleanup or restoration of the easement parcel with regards to hazardous materials from any and all sources other than those hazardous materials introduced to the easement parcel by the City, for which the City shall be solely responsible.

E. The provisions of this Section shall survive the revocation or termination of this easement agreement.

11. Not less than seventy-two hours prior to the commencement of any construction, maintenance, replacement, relocation, or removal of the Facilities within the easement, the Grantee may notify the Grantor in writing or orally, and identify its intentions for the work, including how it intends to address questions of access, security, and any other impacts of the work, provided that such notice may not be given in the case of emergency. In the event the Grantee must undertake emergency work, it may provide notice to the Grantor either before or after commencement of the work as the emergency reasonably allows. At all times during any period of time that Grantee is at the easement, Grantee shall have in place insurance with commercially reasonable amount and types of coverage, providing coverage for Grantee’s activities and omissions at the easement. The provisions of Paragraph 11 are subject to the provisions of Paragraph 3 above.

12. Grantee shall maintain its Facilities at its sole cost and expense. If any tax or other assessment is imposed upon Grantee as a result of the rights provided to Grantee under this Agreement with respect to the Easement or upon the personal property of Grantee located within the Easement, then Grantee shall pay such tax or other assessment prior to delinquency.

13. It is agreed that this Easement (including its Exhibit(s)) covers the entire agreement between the parties and no representations or statements, verbal or written, have been made modifying, adding to or changing the terms of this Easement. The terms and conditions hereof shall inure to the benefit of and be binding upon Grantor and Grantee and their representatives, successors or assigns.

14. If a court of competent jurisdiction holds any part, term or provision of this Easement to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties’ rights and obligations shall be construed and enforced as if the Easement did not contain the particular provision held to be invalid. If any provision of this Easement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

15. The waiver by Grantor or Grantee of the breach of any provision of this Easement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party or prevent either party thereafter enforcing any such provision.

16. Notices shall be sent by registered or certified mail, postage prepaid or hand delivered. Such notices shall be deemed effective when mailed or hand delivered at the addresses specified below.

CITY OF YAKIMA, GRANTEE GRANTOR:

c/o Public Works Director c/o

129 North 2nd Street Address:

Yakima, WA 98901

509-575-6000 Telephone:

Either party may update its notice information by providing an update in writing to the other party.

17. This Easement shall be recorded with the Yakima County Auditor. Grantee shall be responsible for recording this Easement and providing a conformed copy to Grantor for its records within ten (10) days of both parties signing the Easement.

18. Grantor represents and warrants to the City that: (i) Grantor has all necessary power and authority to execute and deliver this easement to the City; (ii) Grantor is the owner of the herein-described real property; (iii) that said property does not have any other easements, restrictions, reservations, other servitudes or conditions not of record, shown on the plat or visible by inspection over, above, underneath or through the property subject to this easement agreement; and (iv) to the best of Grantor’s actual knowledge, Grantor has never generated, stored, handled, or disposed of any hazardous waste or hazardous substance upon the easement area, and Grantor has no actual knowledge of such uses historically having been made of the easement area or such substances historically having been introduced thereon.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed this \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

**CITY OF YAKIMA, GRANTEE GRANTOR:**

By By

City Manager

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST:

By

Rosalind Ibarra, City Clerk

STATE OF WASHINGTON )

) ss

County of Yakima )

I certify that I know or have satisfactory evidence that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the person who appeared before me and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to be the free and voluntary act such party for the uses and purposes mentioned in the instrument.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for the State of Washington

Residing at:

Appointment Expires\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF WASHINGTON )

) ss

County of Yakima )

I certify that I know or have satisfactory evidence that Robert Harrison signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the City Manager of the City of Yakima, Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for the State of Washington

Residing at:

Appointment Expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_