

## **SAMPLE EASEMENT AGREEMENT**

**Filed for Record at Request of:**

**DOCUMENT TITLE:**  
PERPETUAL EASEMENT AGREEMENT

**REFERENCE NUMBER OF RELATED DOCUMENT:**

**GRANTOR:**

**GRANTEE:**  
CITY OF LYNDEN, a municipal corporation

**ABBREVIATED LEGAL DESCRIPTION:**

Full legal description at page \_\_\_\_ hereto

**ASSESSOR'S TAX PARCEL NUMBER:**

**PERPETUAL AND EXCLUSIVE PUBLIC EASEMENT AGREEMENT  
FOR CITY UTILITY PURPOSES**

THIS EASEMENT AGREEMENT FOR CITY UTILITY PURPOSES (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (hereinafter referred to as “GRANTOR”) and the CITY OF LYNDEN, a municipal corporation (hereinafter “GRANTEE” or “CITY”). Grantor and Grantee may be referred to herein individually as “Party” or collectively as “Parties.”

**RECITALS**

WHEREAS, Grantee is a municipal corporation that operates a municipal \_\_\_\_\_ system for the benefit of the residents of the City, including Grantor (hereinafter referred to as the “CITY UTILITY SYSTEM”); and

WHEREAS, Grantor is the sole owner of real property within the City of Lynden legally described on Exhibit “A” (hereinafter referred to as the “BURDENED PROPERTY”) and depicted on Exhibit “B”, both of which are attached hereto and fully incorporated herein by this reference; and

WHEREAS, Grantor desires to grant to Grantee, and Grantee desires to acquire from Grantor, a perpetual non-exclusive easement over, under and across the Burdened Property for the benefit of the CITY UTILITY SYSTEM, to be used for all CITY UTILITY SYSTEM purposes; and,

WHEREAS, these recitals are a material part of this Agreement,

NOW, THEREFORE, in consideration of the promises and conditions herein, the Parties hereby covenant and agree as follows:

1. **Grant of Easement.**

The GRANTOR, for good and valuable consideration, the receipt of which is hereby acknowledged, grants and conveys to the GRANTEE, a perpetual and non-exclusive public easement for the benefit of the CITY UTILITY SYSTEM (hereinafter “EASEMENT”), over the following described real property:

Legal description of Easement attached hereto as Exhibit “A” and depiction of Easement on Exhibit “B”, both fully incorporated by reference.

2. **Purpose.**

To provide the Grantee with a perpetual and unlimited right to access and use the Easement for all CITY UTILITY SYSTEM purposes.

3. **Costs.**

The Grantor shall pay any recording fees related to this Agreement. Each Party shall be solely responsible for their own attorney’s fees related to the preparation of this Agreement.

4. **City's Rights Under Easement.**

The City shall have the right at any time to enter the Easement and adjoining property owned by the Grantor and its assigns or successors for the purposes of installing, constructing, operating, maintaining, improving, removing, repairing, replacing and using any and all utility equipment, facilities, or infrastructure and all connections and appurtenances thereto. No advance notice to Grantor shall be required.

Grantor expressly grants to the City and its agents the right to use additional areas on the Burdened Properties immediately adjacent to the Easement without notice as necessary for performing work on any and all utility equipment, facilities, or infrastructure and its appurtenances, provided that such additional area is held to a minimum and restored pursuant to Paragraph 5.

5. **Restoration of Easement.**

If the City disturbs the Easement or other portions of the Burdened Property during the course of its work, the City shall restore the surface of the property or Easement as nearly as reasonably feasible to the condition in which it existed at the commencement of said work at its sole expense and within a reasonable time. In the event grass is disturbed, the City's obligation to restore the Easement shall be limited to re-seeding disturbed grass. In the event vegetation such as shrubs or trees are disturbed, the City's restoration obligation shall be deemed satisfied if it replaces the disturbed shrubs or trees with smaller or younger plants. The City is not required to replace disturbed grass, shrubs, trees or other vegetation with the same species or variety as what was disturbed, but will make reasonable efforts to do so.

Notwithstanding the foregoing, the City reserves the right to remove without replacing any structures, objects, trees, or other vegetation which in the City's sole judgment and discretion may interfere with its rights under this Agreement without notice to Grantor.

6. **Grantor's Obligations.**

A. Grantor may not construct, install, or maintain permanent structures or structures that cannot be easily removed within the Easement after the execution of this Agreement. Grantor also may not construct, install, or maintain any structure outside the Easement but interfering with the City's rights under this Agreement.

B. Grantor may not dig, tunnel, perform any construction activity, or allow any condition to occur that might disturb or damage any utility infrastructure in the Easement owned or maintained by the City or its assignees.

C. Grantor may not allow the growth of vegetation within the Easement, except for small plants such as grass or other groundcovers that do not prevent the City or its assigns from exercising its rights under this Agreement and do not have the potential to damage utility infrastructure inside the Easement.

D. Grantor shall remove any encroachments on the Easement or interfering with the City's use of the Easement at Grantor's own expense. Any structures or other objects within the Easement or interfering with the City's ability to use the Easement may be removed without notice to Grantor.

E. Grantor erects all structures and allows the growth of all vegetation on or in such a way

as to interfere with the Easement at Grantor's risk.

7. **Rights Reserved by Grantor.**

All right, title and interest which may be used and enjoyed without interfering with the easement rights conveyed are reserved to the Grantors.

8. **Scope of Easement/Obligations Run with the Land.**

The Easement shall be perpetual in duration, shall constitute covenants running with the land, and shall be binding on the undersigned and all successors, assignees, devisees, or transferees of the Parties and shall in all respects attach to the individual properties legally described in this Agreement.

9. **Severability.**

Should any provision of this Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.

10. **Governing Law and Venue.**

This Agreement shall be construed under the laws of the State of Washington. The venue of any legal action brought under the terms of this Agreement shall be in the Superior Court for Whatcom County, State of Washington.

11. **Expenses and Attorney's Fees.**

The prevailing Party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of their reasonable attorney's fees, costs and expenses.

12. **Not a Public Dedication.**

Nothing contained in this Agreement grants a dedication of any portion of real property to the general public or for any public use, except as may be specifically provided herein. No other right, privilege, or immunity of any Party shall inure to the benefit of any third party, nor shall any third party be a beneficiary of any of the provisions of this Agreement, except as may be specifically provided herein.

13. **Commencement of Easement.**

This Agreement and Easement shall commence upon the recording of this Agreement with the Whatcom County Auditor.

14. **Indemnification.**

To the extent permissible by law, Grantee shall indemnify, defend and hold Grantor, its employees, officers, guests, invitees, partners, or licensees harmless for any injuries, damage to, or claims against Grantor or its employees, officers, guests, invitees, partners, or licensees or the Burdened Property or structures thereon, arising in relation to Grantee's negligent acts or omissions relating to the design and location of any portion or infrastructure of the CITY UTILITY SYSTEM and its appurtenances, Grantee's activities within the Easement, and to any construction defects for facilities constructed by the City after the date of this Agreement and located within the Easement, including but not limited to, claims made by any third party or any Party herein, and their employees, officers, and agents, except that Grantee's indemnification and hold harmless obligation shall be proportionally reduced by any negligent act, omission, or default on the part of

the Grantor and its agents, employees, contractors, or subcontractors.

FOR PURPOSES OF THE FOREGOING INDEMNIFICATION PROVISION ONLY, AND ONLY TO THE EXTENT OF CLAIMS AGAINST GRANTEE BY GRANTOR UNDER SUCH INDEMNIFICATION PROVISION, GRANTEE SPECIFICALLY WAIVES ANY IMMUNITY IT MAY BE GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW. THE INDEMNIFICATION OBLIGATION UNDER THIS EASEMENT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

The forgoing provision was specifically negotiated and agreed upon by the Parties.

Grantors' Initials: \_\_\_\_\_

Grantee's Initials: \_\_\_\_\_

15. **Divestiture.**

Any divestiture of the Grantee's rights under this Agreement shall occur in the following manner:

- A. The Grantee shall notify the Grantor in writing of its intent to divest itself of its rights under this Agreement at least ninety (90) days prior to holding a public hearing on the divesting of the Grantee's rights herein.
- B. The Grantee may in its sole discretion hold a public hearing with regard to the divesting of the rights herein.
- C. The Divesting of the Grantee's rights herein may only occur upon the approval of the City Council.
- D. The Divesting of the Grantee's rights herein shall be without cost, fee or obligation to the Grantor under any circumstance.

16. **Compliance with Laws and Rules.**

Grantee shall at all times exercise its rights herein in accordance with the requirements (as from time-to-time amended) of all applicable statutes, laws, orders, rules, and regulations of any public authority having jurisdiction, including its own.

17. **Nonwaiver of Breach.**

Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision. Waiver of any breach of any provision of this Agreement does not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

18. **Amendment or Termination.**

This Easement may be amended or terminated only by mutual written agreement of the Parties.

19. **Counterparts.**

EASEMENT AGREEMENT

This Agreement may consist of two or more separately ratified counterparts, each of which constitutes a duplicate original of this Agreement.

20. **Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No oral or written statements made by either Party prior to or following entry of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing.

IN WITNESS WHEREOF, Grantor and the City have hereunto set their hands and seals on the day and year first above written.

GRANTOR

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

CITY OF LYNDEN

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

State of Washington   )  
  ) ss  
County of Whatcom    )

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the state of Washington.  
Residing at \_\_\_\_\_.  
My appointment expires: \_\_\_\_\_.

EASEMENT AGREEMENT

State of Washington )  
  ) ss  
County of Whatcom )

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the state of Washington.  
Residing at \_\_\_\_\_.  
My appointment expires: \_\_\_\_\_.