

For City of Yakima Use Only:
Contract No.2019-_____
Project No. _____
Resolution No.R-2019-_____
SOQ No. _____

TEMPORARY WATER TRANSFER AGREEMENT

THIS TEMPORARY WATER TRANSFER AGREEMENT is made and entered into on the ____ day of _____, 2019, by and between CITY OF YAKIMA, hereinafter referred to as the **Transferor**, whose address is 129 N. 2nd St.; YAKIMA, WA 98901; CITY OF TIETON hereinafter referred to as the **Transferee**, whose address is P.O. BOX 357, TIETON, WA 98947; and YAKIMA-TIETON IRRIGATION DISTRICT, an irrigation district organized under the laws of the State of Washington, hereinafter referred to as the **District**, and whose address is 470 Camp Four Road, Yakima, WA 98908;

W I T N E S S E T H:

1. Transferor, for and in consideration of good and valuable consideration does hereby transfer to Transferee 30.00 shares of water from the facilities of the District, said water now being appurtenant to Yakima County tax parcel number 181316-31402 & 181316-11400 owned by the Transferor, and situated, lying, and being in Yakima County, Washington, and within the boundaries of the District, does hereby transfer said 30.00 shares of water from the above-described property for the 2019 irrigation season (the “current irrigation season” herein) to Yakima County tax parcel 161413-11407 owned by Transferee, situated, lying, and being in Yakima County, Washington, and within the boundaries of the District; it being the intention of Transferee to use said shares of water on the property last described for the current irrigation season. This agreement shall continue for the current irrigation season and shall terminate and be of no further force or effect upon the expiration of the current irrigation season without any further action of any party.
2. Transferee does hereby agree to pay the Transferor \$130.00 per share for 30.00 shares, for use in the water year of 2019, a total of \$3,900.00. Payment is due at the Transferor by May 15, 2019.
3. Transferee does hereby agree that the total resulting shares of water to be used on the property last above described, including said shares of water herein transferred, is 30.00 shares of water. The District, for and in consideration of the conditions provided herein, does hereby approve and acknowledge the above transfer of the aforementioned water.
4. The water user parties’ above-described properties and water herein transferred shall be and remain expressly subject to the rules and regulations of the Yakima-Tieton Irrigation District.
5. The water user parties’ above-described properties and water herein transferred are expressly subject to assessments, rates, tolls, and charges of the District for any lawful purpose, including but not limited to the care, maintenance, upkeep, operation, management, repair, reconstruction, betterment, and improvement of facilities of the

District, for the payment of any indebtedness due the United States and the State of Washington, and for the payment of bonds and interest thereon.

6. All assessments, rates, tolls, and charges of the District payable for the current and all prior years associated with the properties involved shall be paid in full prior to the District's approval and acknowledgement of this transfer. The parties shall be responsible for any payments or reimbursements between the parties, and the District shall have no responsibility for the handling or transmittal of such funds.

7. The water user parties' above-described properties and water herein transferred are expressly subject to all the terms and conditions of original water deeds and contracts creating and initiating the water rights transferred herein.

8. The parties acknowledge and agree to the following:

a. Water rights in the Yakima River Drainage Basin, including but not limited to the right of diversion and use of and the extent and priority of the right to the use of any surface water of the Yakima River Drainage Basin, are currently being determined and adjudicated in the case of *State of Washington v. Acquavella*, Yakima County Cause No. 77-2-01484-5.

b. Judge Walter Stauffacher issued an order on August 13, 1992, which provided as follows:

IT IS HEREBY FURTHER ORDERED that changes in the place of use of water within the boundaries of an irrigation district may be approved by the board of directors of the irrigation district and do not require the approval of the Department of Ecology.

c. Any and all judicial determinations in said *Acquavella* case are subject to appeal and later determinations.

d. The final result and effect of said *Acquavella* case may be to void or render voidable this Temporary Water Transfer Agreement and water transferred herein, and Transferor and Transferee assume all risks and loss arising out of such a result.

e. The District cannot make and does not make any representations or warranties or otherwise offer any opinions regarding what the final determination will be in said *Acquavella* case and its subsequent effect upon this Temporary Water Transfer Agreement or the water transferred herein.

f. This Temporary Water Transfer Agreement and water herein transferred are expressly subject to any and all pending and future actions in state and federal courts relating to the determination and adjudication of water rights in the Yakima River Drainage Basin, including but not limited to said *Acquavella* case.

9. Transferor and Transferee hereby release and agree to indemnify, hold harmless and defend the Yakima-Tieton Irrigation District, and its directors, officers,

agents, and employees, on account of any and all damages or claims, including but not limited to attorneys' fees and expenses, by whomsoever made and of any nature whatsoever, arising out of or in any manner connected to this Temporary Water Transfer Agreement or arising out of or in any manner connected to the water herein transferred being found or determined to be void or voidable. Transferor's and Transferee's duties under this paragraph to indemnify the Yakima-Tieton Irrigation District shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Yakima-Tieton Irrigation District or its directors, officers, agents, and employees. The Yakima-Tieton Irrigation District hereby releases and agrees to indemnify, hold harmless and defend Transferor and Transferee and their elected officials, appointed officials, agents, and employees, on account of all damages or claims, including attorneys' fees and expenses, for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Yakima-Tieton Irrigation District or its directors, officers, agents, and employees. In the event of damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (1) the Yakima-Tieton Irrigation District or its directors, officers, agents, or employees, and/or (2) Transferor or its elected officials or appointed officials, employees, or agents, and/or (3) Transferee or its elected officials or appointed officials, employees, and agents, Transferor's, Transferee's and/or the Yakima-Tieton Irrigation District's duty to indemnify under this paragraph shall apply only to the extent of each such party's negligence.

10. Transferee shall pay in advance to the District all the District costs associated with this transfer, including but not limited to all costs for administration, orifice plates, parts, mileage, labor, and all other costs associated with the transfer.

11. The water user parties hereby certify and warrant under penalty of perjury of the laws of the state of Washington that they are the owners of their respective properties as described herein. Transferor furthermore certifies and warrants under penalty of perjury of the laws of the state of Washington that Transferor is not in default under any mortgage lien covering Transferor's property, that there are no liens on Transferor's property, other than mortgage liens, and that the contract seller of such property, if any, has consented to this temporary transfer by the signature below. In the event of any sale or transfer of Transferor's property described above, Transferor shall take full responsibility for notifying any purchaser or other transferee of this temporary transfer.

Transferee: CITY OF TIETON

Transferee Signature

Title: _____

Date: _____

YAKIMA TIETON IRRIGATION DISTRICT

By: _____
Secretary-Manager

Date: _____

Transferor: CITY OF YAKIMA

By: Cliff Moore, City Manager

Date: _____

ATTEST: _____
Sonya Claar Tee, City Clerk

Contract No. _____ 2019-

Resolution No. _____ R-2019-