

Return Address:
Michael F. Shinn
Halverson | Northwest Law Group P.C.
PO Box 22550
Yakima, WA 98907

Document Title: Greenway License

Grantor: City of Yakima, a municipal corporation;

Grantee: Yakima Greenway Foundation, a Washington nonprofit corporation;
The Public

Legal Description (abbreviated):

Additional legal(s) on page(s) ____

Assessor's Tax Parcel IDs#: 191328-32005

GREENWAY LICENSE

PARTIES: Licensee: Yakima Greenway Foundation, a nonprofit corporation

City: City of Yakima, Washington, a municipal corporation

**SUBJECT
PROPERTY:**

City owns and holds fee title to the following parcel:

[need legal]

Yakima County Assessor's Parcel No. 191328-32005

RECITALS:

Licensee desires to improve the Subject Property in the future to provide for additional recreational opportunities for residents of the Yakima area and visitors to Yakima, said property being adjacent to and capable of complimenting the current recreational opportunities offered by the Yakima Greenway.

City desires to provide for additional recreational opportunities and beautify the area adjacent to Highway 24 and the Yakima Greenway, in partnership with the Yakima Greenway to benefit the residents of Yakima and visitors to the City of Yakima and Yakima County.

City and Licensee desire to enter into this License Agreement to allow Licensee to use the Subject Property to improve, beautify, and utilize the property for recreational purposes for the public, pursuant to the terms and conditions of this License Agreement.

AGREEMENT:

1. **Definitions.**

 "City" shall mean the City of Yakima.

 "Licensee" shall mean the Yakima Greenway Foundation.

2. **Term and Termination.** The term of this License shall be for twenty-five (25) years commencing on the date of execution of this License by all parties. For the initial License term, the City may terminate this License only for a public purpose. After the initial twenty-five year period, this License shall automatically renew for additional one-year terms, but may be terminated by either party by giving six (6) months advance written notice prior to the next renewal date.

3. **Grant of License/Premises.** The City hereby grants to Licensee, a license for the purposes stated herein upon the Subject Property described above and in the attached Exhibit "1". An aerial photograph depicting the Subject Property is also attached as Exhibit "2". Fee interest in the Subject Property is owned by the City.

4. **License Fee.** There will be no License Fee for use of the Subject Property because the property is being used for public recreation, public benefit and public use.

5. **Use of Premises.** Licensee may use the premises for recreational pathways, gazebos, picnic shelters, benches, boardwalks, informational signs, lighting, parking lots (of any material), play structures, athletic fields, and similar improvements. All plans for the Subject Property must first be approved by the Public Works Director or its designee, of the City. In using the Subject Property, the Licensee shall comply with all policies and regulations promulgated by the City relative to the location, operation and maintenance of improvements located thereon. In so doing, the Licensee agrees to comply with all applicable federal, state, and local laws, ordinances, regulations, and environmental requirements. The Licensee further agrees to hold the City harmless from claims or suits resulting from any failure on the part of Licensee to comply with these requirements.

6. **Repair and Maintenance.** Licensee shall maintain and repair all of its improvements authorized upon the Subject Property and shall inspect the Subject Property and provide routine maintenance and repair in keeping with its supervision of all properties it controls within the Yakima Greenway Overlay, so as to allow safe public access and use. Licensee agrees to exercise reasonable care in keeping the Subject Property free of debris and waste within a reasonable time and in a good and workmanlike manner.

7. **No Requirement for Immediate Development or Improvements.** Licensee is not required to install any improvements of a temporary, or permanent, nature during the term of the License. One of the intended benefits of the License is to buffer current uses in the Yakima Greenway Overlay from activities as may be permitted pursuant to that certain Land Use Agreement entered into by the City and the Yakima Greenway Foundation on, or about, _____, 2019, and to provide Licensee with additional inventory of useable recreational property to aid Licensee in securing future state or federal funding for the placement of recreational improvements thereon.

8. **Joint Use.** It is understood that the Subject Property may be used jointly by Licensee and the City and that each party will conduct operations in a reasonable manner so as not to unreasonably interfere with the operations of the other.

9. **Reservation of Rights to Maintain and Grant Utility Franchises and Permits.** The City reserves the right for utility franchise and permit holders to enter upon the premises to maintain existing facilities and, for itself, to grant utility franchises, easements and/or permits across the premises (including easements for the City's wastewater facilities if necessary). Such installations will be accomplished in such a

manner as to minimize any disruption to the Licensee. Licensee will contact the City before any improvements are placed or constructed in order to protect legally installed underground utilities. Exhibit "3" attached hereto depicts the current easements for utilities and access, as well as a projected easement for wastewater purposes.

10. **City's Right of Entry and Inspection.** City reserves the right to enter upon the premises at any time without notice to the Licensee for the purpose of conducting any activity associated with City operations. City shall in no way be responsible for any incidental or consequential damages due to such entry and inspection and any subsequent loss of use by Licensee. City may from time to time go upon the Subject Property for the purpose of inspecting any excavation, construction, or maintenance work being done by the Licensee.

11. **Hold Harmless/Indemnification.** Licensee, its successors or assigns, will protect, save and hold harmless the City, its authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Licensee, its assigns, agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities authorized by the Licensee, resulting from acts or activities occurring on the Subject Property. Licensee further agrees to defend the City, its agents or employees in any litigation, including payment of any cost or attorney's fees, for any claims or actions arising out of or in connection with acts or activities authorized by this License. This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the City or its authorized agents or employees; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the City, its agents, or employees; and (b) the Licensee, its agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Licensee or its agents or employees.

12. **Liability Insurance Required.** Within five (5) business days of the execution of this License Agreement, Licensee shall file with the City evidence of comprehensive public liability insurance, or equivalent approved policy, with limits of not less than two million dollars combined single limit for bodily injury and property damage, with the City of Yakima, its elected and appointed officials, officers, employees and agents named as an insured party, insuring against liability from injury or damage resulting from Licensee's occupancy of, activities on, or construction or maintenance of any facilities on the Subject Property, which insurance shall be maintained in effect during the term of this License Agreement.

13. **Nondiscrimination.** Licensee, for itself, and successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, creed, national origin, marital status, age, sex, or the presence of any sensory, mental or physical handicap shall be excluded from participation in, be denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the Subject Property now, or hereafter, and that

in connection with the construction of any improvements on the Subject Property and the furnishing and services thereon, no such discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, that such discrimination shall not be practiced against the public in their access to and use of any facilities provided for public accommodation constructed or operated on, over, or under the Subject Property by Licensee. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the City to terminate this License in accordance with the procedures set forth herein.

14. **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed to be delivered three (3) days after having been deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set forth below or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the City: City of Yakima
129 N. 2nd Street
Yakima, WA 98901
Attention: City Manager

Copy to: City of Yakima
129 N. 2nd Street
Yakima, WA 98901
Attention: City Attorney

If to Licensee: Yakima Greenway Foundation
c/o Kellie Connaughton
111 S. 18th Street
Yakima, WA 98901

15. **Modification.** This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties hereto. No failure on the part of any party to enforce any covenant or provision herein contained, nor any waiver of any right thereunder by any party, unless in writing, shall discharge or invalidate such covenant or provision or effect the right of said party to enforce the same in the event of any subsequent breach or default.

16. **Assignability.** Licensee's obligations under this License cannot be assigned without the prior written consent of the City.

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IN WITNESS WHEREOF the parties have caused this License to be executed by the duly authorized officers on the dates set forth below.

CITY:

CITY OF YAKIMA, WASHINGTON
a municipal corporation

LICENSEE:

YAKIMA GREENWAY FOUNDATION
a nonprofit corporation

Cynthia Martinez, Interim City Manager

Ellen S. Jackson, President

Date of Execution: _____

Date of Execution: _____

ATTESTATION

STATE OF WASHINGTON)
) ss.
County of Yakima)

On this _____ day of _____, 2019, I certify that I know or have satisfactory evidence that _____, City Manager of the City of Yakima, is the person who appeared before me, and said person acknowledged that they are authorized to sign this instrument on behalf of the City of Yakima, and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
County of Yakima)

On this _____ day of _____, 2019, I certify that I know or have satisfactory evidence that _____, President of the Yakima Greenway Foundation, is the person who appeared before me, and said person acknowledged that they are authorized to sign this instrument on behalf of the Yakima Greenway Foundation, and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____

Exhibit “1”
Legal Description of Subject Property

Exhibit "2"

Aerial Photograph of Subject Property

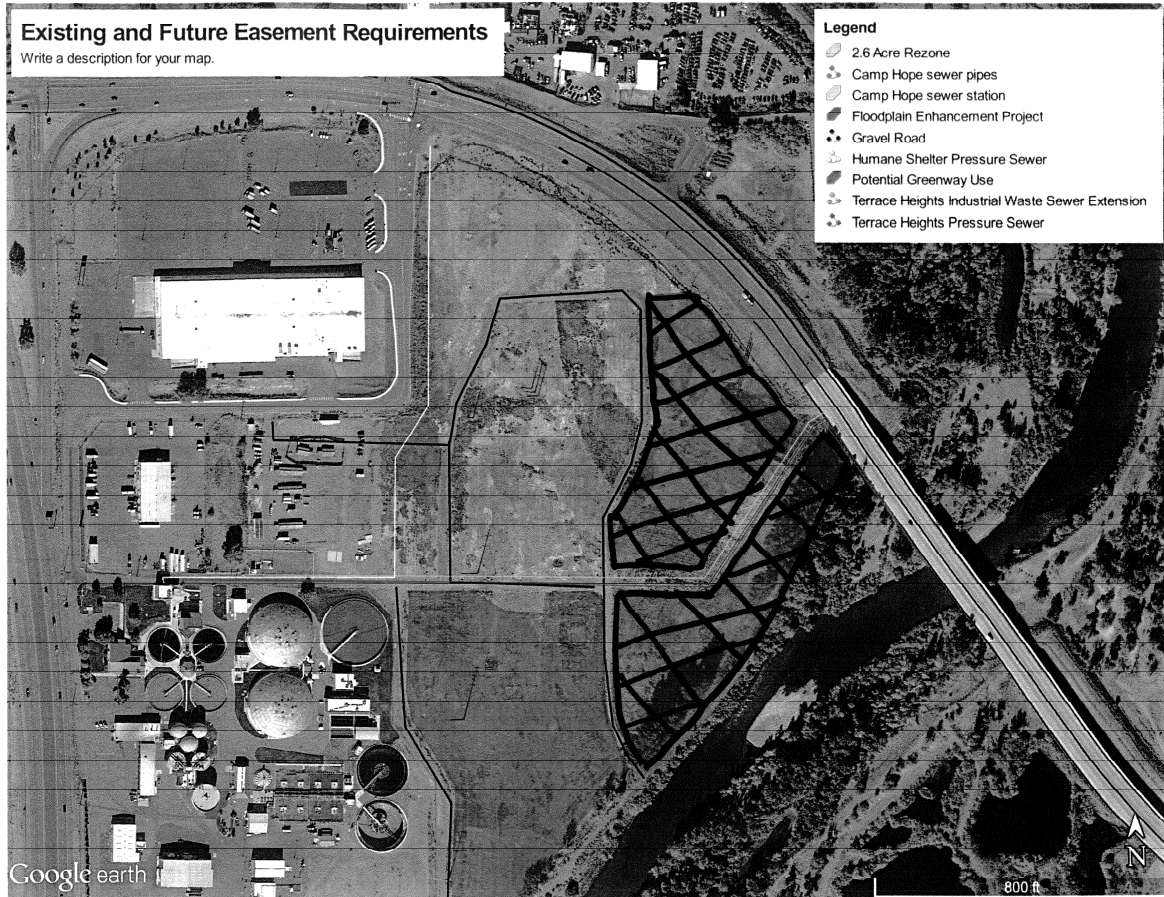


Exhibit “3”
Current and Projected Easements