

AGREEMENT FOR CONSTRUCTION EASEMENT AND INDEMNIFICATION

This Agreement for Construction Easement and Indemnification (Agreement) is granted this _____ day of _____, 2016, by _____ (Water User) and is granted to the CITY OF FERNDALE, a Washington municipal corporation (City). This Agreement is based on the following facts:

A. The City is taking over the facilities and operations of the Central City Water Association (Association) in order to provide water service directly to the Association's prior members. This requires mains and other facilities owned or operated by the Association to be upgraded to meet City standards, including installation of new metering facilities. The upgraded mains and other facilities (including metering equipment) are referred to collectively as the "City Utilities."

B. Water User is a member of the Association and owns the real property described on Exhibit A and located at _____ (property address), which is delineated as Whatcom County Assessor's Parcel No. _____. If the Water User is a partnership, corporation, limited liability company, or other legal entity, the individual signing this Agreement represents that they are duly authorized to execute this Agreement on behalf of the Water User.

C. The upgraded mains and facilities may deliver water at a higher pressure or a pressure that fluctuates or differs from the pressure previously used for water delivery by the Association, for example when water is needed for fire suppression. The upgraded metering facilities may also show a different or higher level of water consumption than levels previously measured by the Association.

D. In order to take over and upgrade the facilities previously operated by the Association, and as a condition of connecting the Property and providing water service directly to the Water User, the City of Ferndale must be granted a temporary construction easement over and across the Property, as well as a **permanent and ongoing agreement from the Water User to hold harmless and indemnify the City from all damage relating to or arising out of the pipes and facilities that make up the Property's private system** owned by the Water User.

Now therefore, in consideration of the benefits to be received, including but not limited to water service from the City of Ferndale, the Water User grants, agrees, and covenants as follows:

I. Temporary Construction Easement

1.1 The Water User hereby grants permission to the City (and its agents or third-party contractors) to enter the property from approximately 7:00 a.m. to 7:00 p.m. (Pacific Time), and to carry out utility and other construction work necessary to upgrade the facilities and connect the Association's members (including Water User) to the City Utilities.

1.2 The City shall give Water User advance notice of work on the Property by written notice via door hanger upon the main entry door or other prominent location of the Property's residence at least twenty-four (24) hours before beginning work on the Property. The installation shall be performed in accordance with City standards for water service installation; provided however, that the Owner shall assume full responsibility for the service upon completion of the project pursuant to Paragraph 1.3 below.

1.3 When the upgraded facilities are complete and the Association's members have been connected directly to the City Utilities, the City shall use all reasonable efforts to restore the Property as near as possible to its condition prior to the utility work. After surface restoration, the Owner shall be responsible for maintenance, such as watering, weeding and trimming of restored landscaping. Upon surface restoration, the private property Owner assumes full and complete responsibility for, inspection, maintenance, and repair of the water service on the Property and the City owned water meter.

1.4 Except as provided below and in Section II, the City shall defend, indemnify and hold harmless the Water User from any and all damages, injuries and claims arising out of any negligent acts of the City, its employees, elected or appointed officials, agents, contractors and/or representatives (collectively, "Agents") as well as from any injuries suffered by the City's Agents, unless the damages or injuries are caused by the negligence of the Water User or its heirs, successors, and assigns, tenants, licensees, agents and invitees (collectively, "Guests/Agents"). The City waives immunity under the Industrial Insurance Act, but only as to actions seeking damages from Water User related to the utility upgrade work and connection. The City assumes no liability whatsoever for any alleged damage or injury resulting subsequent to this completion of the system upgrade and connection to City Utilities or from any source other than as set forth above.

II. Permanent Hold Harmless and Indemnification

2.1 While the Construction Easement granted in Article I above is temporary in nature, **the provisions in this Article II are permanent and ongoing and shall run with the land.**

2.2 Water User agrees that the City Utilities end with the water meters being installed by the City, and all pipes and water system facilities beyond the meter are the Water User's property and Water User assumes responsibility for inspection, maintenance and repair all facilities beyond and including the City-owned meter. The City is not responsible for any portion of the Property's water system facilities beyond the meter, and specifically disclaims any and all warranties, including but not limited to workmanship, fitness for a specific purpose, and merchantability, as to those facilities.

2.3 Except as set forth in Section 1.4, Water User shall hold harmless, save and indemnify the City and its Agents, from all claims related to any leaks or damage to the Property's private system, and from all claims, suits, liability, losses and damages of any kind resulting directly or indirectly from the actions or omissions of

the Water User or their Guests/Agents or any member of the public, or damages arising out of the City's work on the Property and connection of the Property to City Utilities, and, The indemnification includes the responsibility to appear and defend in any legal proceedings and cooperate with the City's defense and to pay the City's attorney fees and costs. Water User waives immunity under the Industrial Insurance Act and assumes all liability for actions by the Water User or its agents against the City.

2.4 The Water User shall be responsible for payment for the water service provided by the City, pursuant to the City's schedule of rates and charges and the usage as determined by the City's upgraded metering facilities.

Water User authorizes the City to record with the Whatcom County Auditor a single Memorandum collectively giving notice of this Agreement and the Agreements between the City and all other Association members.

EXECUTED this _____ day of _____, 2016, for WATER USER:

Signature
By: _____
Print Name

Print Title

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 they signed this instrument, on oath stated that they were was authorized to execute the instrument, and acknowledged it as the free and voluntary act of the Water User 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 Commission Expires _____

EXECUTED this _____ day of _____, 2016 for the CITY OF FERNDALE:

Mayor

Approved as to Form:

Department Head

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 they signed this instrument, on oath stated that they were
authorized to execute the instrument, and acknowledged it as the Mayor of the City of
Ferndale 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 Commission Expires _____