

Contract No. 108-10

WHEN RECORDED RETURN TO:

City of Richland
City Clerks Office
P.O. Box 190, MS-05
Richland, WA 99352

**UTILITY FRANCHISE AGREEMENT WITH THE KENNEWICK
IRRIGATION DISTRICT**

This agreement made this 5th day of May, 2010 between the City of Richland, Washington, a municipal corporation, hereinafter called the "City" and the Kennewick Irrigation District, hereinafter called the "Grantee".

WHEREAS, Richland Municipal Code, Section 12, establishes the regulatory authority of the City of Richland to regulate the installation of utilities within it's Right-of-Ways, streets, and public places, and

WHEREAS, The Kennewick Irrigation District requested to The City of Richland that it be allowed to install it's infrastructure within City Right-of-way, and

WHEREAS, The City of Richland is willing to grant to the Kennewick Irrigation District, a nonexclusive right and franchise to construct, maintain and operate in, over, upon and under the present and future streets of The City of Richland, Washington, an irrigation distribution system and appurtenances, subject to the terms of conditions specified in this agreement.

NOW THEREFORE, In consideration of the installation of Kennewick Irrigation District infrastructure within City right-of-way, and mutual agreements herein contained, the parties do agree as follows:

1. Utility Franchise Agreement – Acceptance by City:

The City of Richland, Benton County, Washington, hereby grants to Kennewick Irrigation District, a right and franchise to construct, maintain and operate in, over, upon and under the present and future streets, alleys, highways, and other public places (all hereinafter referred to as "streets") within the present or future limits of the City, irrigation distribution mains, laterals and services, and all necessary or desirable appurtenances thereto, for the purpose of supplying water for irrigation, and other non-potable water use purposes.

2. The right and franchise hereby granted shall not be exclusive and the City expressly reserves the right, at any time during the term of the right of franchise hereby granted, to grant rights or franchises for such purpose to other persons or corporations, as well as the right in its own name as a municipality, to use said streets for such purposes.

3. The locations and methods of installation and maintenance of all pipes, boxes, laterals, conduits and connections, and all appurtenances thereof (hereinafter referred to as "facilities") shall be subject at all times to reasonable regulation by the City Council or by such committee of the Council or such official of the City as may be designated by the Council, and all such facilities shall be so constructed and maintained so as to interfere as little as practicable with street and/or City utilities or other traffic. All of such facilities shall be installed and at all times maintained by Grantee in safe order and condition and in accordance with the specifications and requirements of the City of Richland Standard Specifications and Drawings and/or the current applicable Kennewick Irrigation District standards, when they exceed the City standards, and Grantee, at its own cost and expense, shall promptly repair all streets in any way disturbed by Grantee (or his contractor), and shall restore the same to as good a condition as the same were prior to the doing of any work thereon or therein by Grantee (or his contractor). Grantee shall comply with all existing and future lawful ordinances, rules, or regulations of the City relating to the use or improvement of said streets, including but not limited to, moratoriums on newly constructed and newly reconstructed streets. Grantee may, from time-to-time, be required to make emergency excavations within the franchise area for the purpose of responding to emergencies and protecting public safety. Grantee shall contact the City Public Works Engineering Department immediately upon learning of such emergency incidents with the intent of informing the City of its intentions. As soon as practical after such incidents, Grantee will file such permit requests or plans required by the City to properly review and inspect said excavation and repair.
4. The Grantee herein agrees to maintain a customer service telephone number and sufficient operations personnel to respond to customer and system emergencies.
5. Grantee hereby agrees and covenants to indemnify and save harmless the City and the officers thereof against and from any and all claims, and all damages, cost and expense to which it or they may be subjected by reason of any negligent act or omissions of Grantee, or its agents, or servants, in any manner arising out of the construction, reconstruction, maintenance, or operation of any property of Grantee in, over, upon, or under any of said streets.
6. Nothing in this agreement shall be deemed or construed to limit the power of the proper authorities of the City to construct or maintain public improvements and whenever in the prosecution or maintenance of such improvements it becomes necessary or convenient to require the removal, readjustment, or relocation of any Grantee's facilities located in, over, upon, or under any of said streets, after reasonable written notice of such relocation and after receipt of reasonable plans and specifications of the planned public facility improvement, the same shall be done by and at the sole expense of Grantee.
7. If Grantee shall fail to perform or comply with any of the obligations and requirements imposed by this agreement, after the receipt of written notice from the City specifying the respect in which Grantee is deemed to be in default hereunder and demanding that such default be remedied within a reasonable time to be fixed in such notice, the right and franchise granted herein may be terminated and annulled by the City Council, after reasonable opportunity for Grantee to be heard and appropriate determination is made with respect to such alleged default.
8. Said franchise may not be assigned without written consent of the City, but if such consent is given and the franchise is assigned, it shall be

binding upon the successors, assigns, and independent contractors of the Grantee.

9. Term:

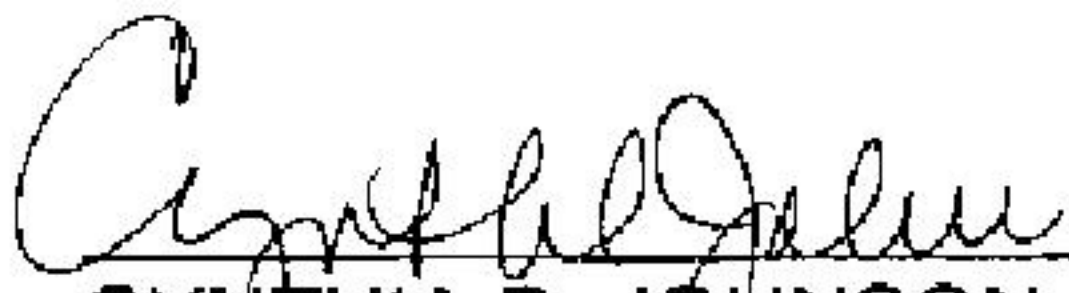
This agreement shall be effective upon acceptance by the Grantee for a period of twenty (20) years, referred to as the primary term. The franchise will automatically renew for successive period of five (5) years each unless canceled at the end of a term by either party by written notice to the other given no less than 180 calendar days prior to the end of the primary term or the then successive current term.

10. Recording:

This agreement shall not be enforceable against any part unless Grantee has caused the same to be filed and recorded with the Benton County Auditor.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

CITY OF RICHLAND

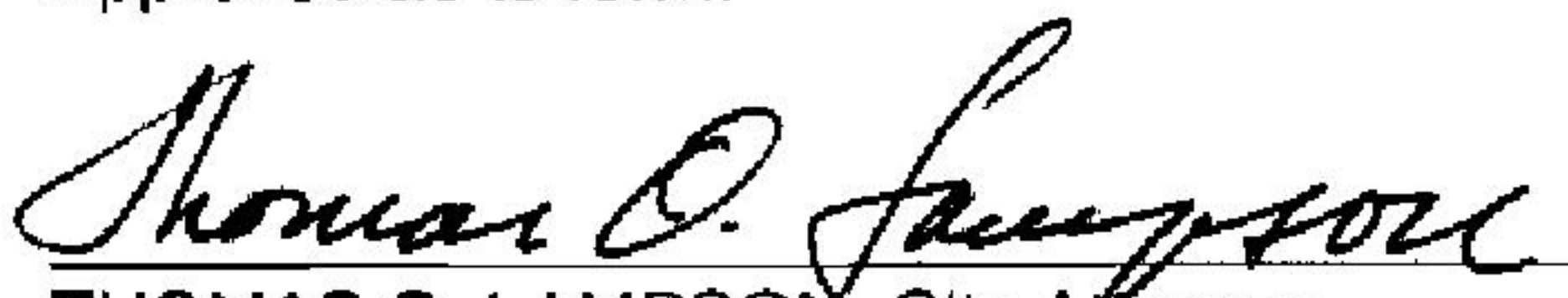

CYNTHIA D. JOHNSON
Interim City Manager

11/29/07
Date

Attest:


DEBRA C. BARHAM, Deputy City Clerk


Approved as to form:



THOMAS O. LAMPSON, City Attorney

John Jaksch
I, ~~Ryan Pratt~~, of The Kennewick Irrigation District and on behalf of the said District do hereby accept the same and agree to abide by the terms and conditions set down therein, and we further state that we are authorized by said corporation to accept the said franchise.

DATED this 5th day of May, 2007.

KENNEWICK IRRIGATION DISTRICT


RYAN PRATT, Board President


John Jaksch, Board President

STATE OF WASHINGTON)
)ss.
COUNTY OF)

On this 5th day of May, 2000, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Ben Dallas, to me known to be the BOARD PRESIDENT, of the Kennewick Irrigation District, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year first above written.

Sandra Marie Dallas
Notary Public in and for the State of
Washington; residing at Kennewick
My commission expires: March 13, 2013
Print name: Sandra Marie Dallas



STATE OF WASHINGTON)
)ss.
COUNTY OF BENTON)

On this 28th day of November, 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CYNTHIA D. JOHNSON and DEBRA C. BARHAM, to me known to be the INTERIM CITY MANAGER and DEPUTY CITY CLERK, respectively, of the CITY OF RICHLAND, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Jacqueline A. Ayers
Notary Public in and for the State of
Washington; residing at West Richland, WA
My commission expires: 11-24-2008
Print name: Jacqueline A. Ayers

