

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made between the City of Othello, 500 E Main Street, Othello Washington, a municipal corporation of the State of Washington (Grantor), and J. R. Simplot Company, 1201 N. Broadway Ave, Othello, WA, 99344, (Grantee). (name and address)

RECITALS

Grantor is a municipal corporation organized as a non-charter code city and as such is the entity in possession and control of public right of way within the corporate limits of the City of Othello.

2. Grantee wishes to occupy the public right of way for purposes related to the Grantee's operations.
3. Grantees use of Grantors property, shall be limited to use of the portion and specific areas designated in writing by the Grantor for a definite period of time.

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The parties therefore agree as follows:

1. **Grant of License to Use and Consideration Therefore.**

Area of Occupancy: Grantor grants to Grantee a limited License to use the following described portions and specific areas of the public right of way controlled by Grantor: Proposed licensed area is a strip of property, approximately 23 feet wide by 890 feet long. Property is parallel to 1201 Broadway Ave., in front of J.R. Simplot plant, adjacent to the Simplot east boundary line. See attached site plan with shading to identify area.

Type of Occupation: The sole purpose of occupying this right of way described above is: The proposed licensed property has been utilized for potato manufacturing activities, for the last 30 years. Grantee desires to continue use of property for potato manufacturing activities. The right of way is used to transport finished goods to our refrigerated warehouse. Said right of way is also used for utilities distribution; natural gas reducing station, and high voltage transformers, currently occupy part of the right of way area.

Grantee also intends to erect a security fence along right of way, as mandated by our customers and the F.D.A.

Consideration: Grantee shall pay to the Grantor the amount of \$ 50.00 per year (period) for the duration of the License. Initial payment is due upon acceptance of this agreement and subsequently on or before January 15th of

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named as an additionally insured on such policies as respects the uses and responsibilities described herein. The insurance policy shall provide for coverage not only of the property, but also to the use of the property. The policy(s) shall stipulate that the Grantor shall be notified in writing, prior to cancellation of said policies.

The Grantee shall defend, indemnify and hold harmless Grantor, its officers, employees, officials, and successors and assigns, from and against any and all liability, loss, damage, expense, injury, action and claims to the extent asserted or arising directly or indirectly on account of or out of acts or omissions of Grantee, its agents, contractors, employees, licensees or invitees in the exercise of the rights granted in this License.

6. **Governing Law and Venue.** This License Agreement shall be governed by and construed in accordance with the laws of the State of Washington, and any litigation arising out of this License Agreement shall be in Adams County, Washington.

7. **Entire Agreement.** This License Agreement is the complete and exclusive agreement between the parties, which supersedes all proposals or prior oral agreements, and all other communications between them relating to the Grantor's property. Amendments or modifications to this Agreement shall only be effective if they are in writing and signed by both parties.

8. **Attorney's Fees and Costs.** In the event of any action by Grantor or Grantee brought to interpret this Agreement or to enforce any of the provisions herein, then the unsuccessful party in such action shall pay to the prevailing party a reasonable attorney's fee and costs fixed by the Court, including attorney's fees and costs on appeal, if such be had.

In the event one party is required to expend fees on an attorney's services because of a breach or default by the other party, then the breaching/defaulting party shall pay to the other party the actual attorney's fees incurred as a result of that breach and/or default, provided, however, that the defaulting/breaching party be given thirty (30) days' prior written notice of the breach and/or default so that it may have a reasonable opportunity to cure the breach and/or default before attorney's fees are incurred.

DATED this 31 day of Aug, 2005

City of Othello Grantor:

By: [Signature]

Title: Mayor pro tem

Grantee:

By: [Signature]

Title: unit Director